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**DOCUMENTS**  
**OF THE**  
**SENATE**  
**OF THE**  
**STATE OF NEW-YORK,**  
**FIFTY-FIFTH SESSION,**  
**1832.**

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**VOLUME I.**  
**FROM No. 1 TO 65 INCLUSIVE.**

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**1832.**



No. 1.

## IN SENATE,

January 3, 1832.



### MESSAGE FROM THE GOVERNOR.

GENTLEMEN OF THE SENATE, AND OF THE ASSEMBLY:

In contemplating the occurrences of the past year, we cannot be too grateful to the Ruler of events for our condition, as contrasted with that of the people under other governments. While we are happy, in the enjoyment of peace and plenty, without restraint, under the mild influence of institutions of our own choice, and laws of our own enactment; they have been agitated with alarms, wasting themselves with internal or external warfare, and submitting to cruel sacrifices in their efforts to reform abuses, or to revolutionize their governments.

We, as men and as republicans, cannot be indifferent spectators of the struggles of liberty in any part of the globe, whether in the old or the new world, in classic Greece, heroic Poland, or along the shores of the Oronoke or La Plate. But for the wreck of Poland's hopes we have peculiar regrets. We cannot forget that her gallant sons, animated by the most disinterested love of liberty, and looking upon tyranny every where as the common enemy, encountered it in our army, and shed their blood in our defence. That generous and chivalrous nation, in this day of her adversity, is entitled to, and receives from us, fraternal sympathy.

The wealth, the trade, and the external pomp of a nation, do not always indicate a happy condition of the people who compose it. Through the perversions by man, of the blessings which a kind Providence designs for all his reasonable creatures, we sometimes witness the incongruity of great apparent national prosperity, while a large proportion of the population, deprived of every comfort, are absorbed in the cares of procuring the means to sustain life. It is not so with us. Here national prosperity is the prosperity of every

[S. No. 1.]

individual. Not a cent is contributed by way of tax, not a dollar is expended from the public coffers, which is not assented to by the people, and employed to enlarge their means of enjoyment. Yet, with all these advantages, gloomy patriots have presaged a speedy downfall of our government; and there have not been wanting others, who have employed themselves to convert such forebodings into history.

Some reflecting statesmen among us have entertained a distrust of the perpetuity of our free institutions, from the tendency of large masses of people to blind infatuation, and common errors of opinion; and others from the possibility of legislating our constitution into something different from its fair import; while a common infirmity of human nature disposes us to change our position, whatever may be its advantages.

The ancient democracies were composed of small communities, and from the first of the above causes, were of short duration. These examples, however, should give us no alarm, because we enjoy advantages for a durable republic, which were formerly unknown, in the superior intelligence of the great body of the people, and in the extension of our popular institutions so as to embrace a great nation. Nor should we anticipate uninterrupted quiet, for communities the most enlightened may occasionally be affected by the contagious phrenzy of popular delusions, and push blindly forward to deeds of fatuity; yet in such, the clouds of passion soon pass away, and ill-founded or ill-directed excitements vanish in the neighborhood of their source.

In relation to the second source of distrust, questions arise which always have divided, as they always will divide, the political opinions of the people. Hitherto all attempts which have been made to give, by legislation, a permanent enlargement to the provisions of the constitution, have, in the most unequivocal manner, been repelled by the people. Our present chief magistrate commended himself to the suffrages of his fellow citizens, by his ability, the patriotism of his personal sacrifices, and the soundness of his views on all these questions; and he owes their increasing affections, as well to the frank and fearless manner in which he has since avowed these opinions and acted upon them, as to the success, both at home and abroad, which has attended the measures of his administration.

The President's recent message to Congress presents a gratifying picture of our foreign relations and internal condition. We have

nothing to fear from collision with any foreign power, and with some of the principal nations of Europe our differences of long standing have been adjusted, and our intercourse is upon the footing of reciprocal good will. At home, industry is branching into new channels, and its productiveness is evinced in public enterprises for improving the internal condition of the States, and in a more general diffusion of individual wealth.

This state is so happily situated, from its geographical position, its fertile soil, its facilities for conducting manufacturing operations, its mineral treasures, and its great commercial city, that no general causes of prosperity can prevail, without a large share of their advantages being enjoyed by us.

The revenues derived to the general government from commerce are annually increasing, although our home industry has recently supplied our markets, wholly or in part, with many articles which formed a material proportion of our importations. Increase of revenue under such circumstances, affords another evidence of our prosperity, because the desire of enjoyment increases with the means of gratifying it; and so the amount of foreign trade is a proof of the wealth, as well as the wants of a nation.

The revenues are so abundant as to admit of no doubt that the national debt will be entirely paid off in the course of two years: indeed the President expresses his belief, that it may be extinguished during his present term of office. When this event occurs, it will be hailed with great joy by the people of this country, not so much on account of the burden which will have been removed, as by reason of its settling a political doctrine respecting debts contracted on legislative authority, by a precedent adverse to the theory which obtains under governments differently constituted.

Whatever may be thought of the fitness of borrowing money on the credit of the government, for its defence, or to prosecute great enterprises for the durable benefit of the country, no person can question the injustice of transmitting to those who come after us the burden of a heavy debt. No public debt should be created, but with ample provision for its liquidation within a reasonable time. It has never yet been determined by the representatives of a free people, what extent of moral obligation rests upon them to provide for the discharge of a debt, forwarded on for payment, by their predecessors in power.

The financial condition of our State is a source of congratulation. We have large funds secured for common schools and literary purposes; a large capital has been invested in internal improvements; and the State owes no debt except for the construction of its canals.

By a law of the last session, all the fiscal accounts of the State are to be closed on the thirtieth day of September, instead of the thirtieth day of November, as formerly established. The exhibit therefore for the present year will embrace the transactions of ten months only, and the sums given must be taken with that qualification.

The canal debt amounted on the first day of January, eighteen hundred and thirty-one, to seven millions, eight hundred and twenty-five thousand and thirty-five dollars. Nine thousand six hundred and fifty-three dollars of the stock has been cancelled, and two hundred and forty thousand, two hundred and sixty-three dollars has been borrowed during the past year for continuing the works upon the Chemung and Crooked lake canals, so that the debt on the first day of January instant, amounted to eight millions, fifty-five thousand, six hundred and forty-five dollars.

The receipts into the treasury, of revenue on account of the canal fund during the past year, to the thirtieth day of September last, are: On account of tolls, seven hundred and twenty-two thousand, eight hundred and ninety-six dollars; from other sources, three hundred and seven thousand and twelve dollars. These receipts, however, do not include the collections of tolls and salt duties for the month of September, as the arrangements with the depositing banks do not make these collections payable into the treasury, until the fifteenth day of October,

The expenditures for the same time, on account of interest, repairs, superintendence, &c, amount to the sum of five hundred and six thousand, eight hundred and sixty-six dollars; which, deducted from the receipts, leaves five hundred and twenty-three thousand and forty-five dollars, which has been added to the fund under the control of the Commissioners, applicable to the extinguishment of the canal debt,

This fund, amounting to two millions, two hundred and thirty-eight thousand, one hundred and ninety-eight dollars, and which deducted from the canal debt, leaves the balance of that incumbrance five millions, eight hundred and seventeen thousand four hundred



and forty-seven dollars, is either vested in stocks or deposited in banks, at various rates of interest, from three and a half to five per cent.

It may be satisfactory to state, in addition to the operations of the fiscal year, that the whole amount of tolls received upon the canals up to the time of closing the navigation, is one million, two hundred and twenty-two thousand, four hundred and twenty-three dollars, of which, twenty-eight thousand, nine hundred and eighty-eight dollars, were received from the Oswego and Cayuga and Seneca canals.

The nominal amount of the general fund, on the thirtieth day of September last, was one million, one hundred and thirty-one thousand, two hundred and twenty-one dollars; its real value is supposed to be eight hundred and five thousand, nine hundred and eighty-seven dollars. The estimated receipts from it, applicable to the expenses of the government for the ensuing year, is one hundred and twelve thousand and one hundred dollars. The estimated expenditures for the same time, is two hundred and sixty-nine thousand, nine hundred and sixty-seven dollars. The actual payments out of the treasury during the past year, up to the thirtieth day of September, for the ordinary expenses of the government, including the incidental appropriations of the last session of the Legislature, amounted to two hundred and sixty-five thousand, five hundred and two dollars.

The amount of expenditures above the actual receipts of revenue, was paid out of the receipts into the treasury from the principal of the general fund, avails of the sales of escheated lands, and principal and interest of the school fund. The contributions from the last mentioned source will be refunded by a transfer of securities from the principal of the general fund.

Having in my former messages given a precise and full account of the condition of the treasury, it will not be necessary for me now to present the state of our finances more at large.

As the time is fast approaching when the means now at command to supply the disbursements of the government will be exhausted, and when new sources of revenue must be opened, I feel it my duty to keep you admonished of the fact, and to suggest such measures of relief as occur to my mind.

Our great and growing State, from its extent, population, and activity in commerce and the productive arts, will require for its ordi-

nary expenses, and to cherish its various interests, a large annual expenditure of money. The common schools are now adequately provided for, and liberal appropriations have been made for the advancement of education in higher departments; but the time may come when the funds set apart for their use must be enlarged. The interests of learning will in various forms require both occasional and permanent aid from the government; crime must be punished, vice suppressed, and the helpless taken care of. The physical resources of the State must be developed by extending to sections which have never partaken of the public bounty, the benefits of the public enterprize. The iron regions of the north should be opened to their appropriate markets; and the southern and southwestern counties should, through their various practicable channels, find outlets for their rich and valuable products.

It is, I conceive, one of the most imperative duties of a government to open, as far as it has the means to do so, consistently with other interests, all the important avenues for the trade of the State. The discharge of this duty should not be confided to private interests, with its direct as well as incidental power and influence, without necessity. We have already reaped much profit as well as glory in the construction of our two canals, along the main channels of the trade of the State. These enterprizes were justified by plain indications, both of their utility and probable returns of profit, and the repayment of the debt was secured by an adequate appropriation from the public treasury.

I would not recommend a burden upon the people by way of tax, as heavy as that voluntarily assumed by our patriotic neighbours in Pennsylvania and Ohio; and I hope that by avoiding a large debt it will be unnecessary; but I propose to lay the foundation of a State fund to be sacredly appropriated to the purposes of internal improvements.

The means for the creation of a fund, and for revenue to defray the ordinary expenses of the government, are the residue of the general fund, the small remains of unappropriated land, the power of partial taxation, and of laying a general direct tax: the means in prospect are, the auction and salt duties, and tolls of our canals, when they shall be released from constitutional restrictions.

I had hoped that the people of the United States would see the justice and propriety of allowing the States to share in a fixed amount

and permanent distribution of the surplus revenues ; but the times seem unpropitious to measures for obtaining the necessary amendments of the constitution for that purpose. A hope is held out to us, that the public lands, or the proceeds of the sale of them, may be distributed among the States.

If we should be thrown upon the necessity of imposing a direct tax to raise revenue for any purpose connected with the public welfare, I have sufficient confidence in the patriotism and intelligence of our fellow citizens to believe, that they will cheerfully assent to its imposition. They have heretofore done so without a murmur, when the amount of the tax was larger, than, with prudent foresight, we shall ever again want. They will not, I feel assured, require their representatives to delay a resort to this measure, until the public interests have materially suffered.

Many wise and well meaning statesmen imagine, that the revenue from our canals, when the debt shall be paid, will be abundant for all the purposes for which revenue is wanted, and even that it will bear some additional burdens in advance. This is but hypothesis, and is to a certain extent fallacious.

Although the canal tolls are greatly increasing, it is doubted whether the Erie canal will remain the sole, or even the favored, channel for the trade of the west. I allude to projected works diverging from it, at various points, which, with the enterprize of our neighboring States, may compel us to establish a rival way upon its borders. The canal debt, though comparatively small, is intrinsically large, and the means of paying it should not be hazarded.— There is but little probability that the annual expenses for repairs will ever be much less than at present. And reasons of public policy may, in future times, exist to reduce the tolls, and thus materially diminish the revenue to be derived from them. If, however, the canal revenues should be carefully protected, and they should continue in their present flourishing condition, a very few years will place at the disposal of the State authorities, a large annual supply of money, to be employed for any useful purpose.

Among the improvements of the age, the science of road making, as being most intimately connected with our interests and our comfort, deserves to be mentioned. In governments of long standing, the most formidable impediments to good roads have been directly

encountered, and works which astonish us by their magnitude, have been accomplished by the accumulated labor of ages.

The Roman roads were so permanently built, that portions of them have withstood the ravages of two thousand years. They were made as nearly level as possible, by cutting through mountains and filling up vallies; and their surface was made smooth and firm, by laying heavy hewn stone in a bed of mortar. The French have great highways, radiating in all directions from their capital city, built after the Roman manner. In Holland, and other parts of the Netherlands, roads are made by preparing a firm foundation on which brick are laid in mortar.

Rail-roads are of modern invention, more simple and less expensive than the Roman, French, or Dutch roads, and probably better adapted to a cheap, safe and rapid transmission of persons and commodities. There is reason to believe that for great thoroughfares, they will not only supersede every other kind of road, but enter into a successful competition with canals also. They are not so well adapted to general use, as either roads or canals, because they will admit upon their track none but public vehicles of a peculiar construction.

The directors of the Liverpool and Manchester rail-road in England say, in their report made last May, that they had been able to reduce the price of carrying goods one-third, and of passengers one-half; that the rail-way is peculiarly adapted to the conveyance of heavy and bulky articles, and that the conviction is now general, that travelling by the rail-way is the safest, as well as the cheapest and most expeditious.

The public papers have announced, that numerous applications will be made to you for charters to construct these roads in various parts of the State; and the questions will be presented for your decision, whether joint stock companies shall be created to make them, or whether this kind of improvement shall be no further extended. If it should be deemed expedient to progress in these works, then the embarrassing questions will arise, how many shall be made, under what restrictions, and what routes shall be selected.

It is very obvious that a long period must elapse; that this generation and many others, and even centuries, will pass away, before all those improvements which are worthy of the enterprize of the

government, and which in time will be wrought, can be undertaken upon the public means alone. Shall we then forbear to possess ourselves of these advantages, if they can be obtained without imposing public burthens? Charters create monopolies, which are odious to a certain extent, and ought not to be granted, except to accomplish some great public good which cannot be effected without them. The good to be effected, as well as the impossibility of attaining it through other means than private interest, is manifest; and I trust that some of the most meritorious of these applications will receive your sanction, with proper reservations. By inserting the clause, now so common in charters, saving to the Legislature the power to alter, modify and repeal them; and by reserving to the State the right to take possession of them as public property at pleasure, on equitable terms, charters for rail-roads may become eminently promotive of the public good, and I do not hesitate to recommend them as worthy of your profound consideration.

In lending a favorable ear to those projected improvements upon routes contiguous to, and intersecting our canals, or pointing to the sources of their trade, the Legislature should be extremely careful to do nothing which may interfere with the canal revenues, or retard the payment of the debt. It is supposed that companies may be formed to take charters for rail-roads upon the most important routes, with the condition of paying into the public treasury such rates of toll, that no loss of revenue will result from their interference with the business of our canals.

In reviewing the condition of our State, I am irresistibly impelled to notice the condition of our public highways; and in doing so, I aim at an object beyond your immediate legislation.

Our road tax is now generally looked upon as a burthen, and is worked out with as little fidelity in labor, or regard to time, as the laws and indulgent overseers will permit. Although we sometimes witness operations in repairing highways conducted with skill, and evincing a laudable neighborhood pride; yet in most places they are managed without system, so that of the work of one year, scarcely any thing of value remains for the next. If our farmers, in whose hands these roads generally are, could be persuaded that a reasonable assessment, faithfully and judiciously worked out upon their roads, would be more profitable to them than the same amount of labor upon their farms; and that it would enable them to carry much

larger loads, in less time, with less injury to carriages and horses, to their next market town, and thus raise the value of their produce, we might expect to see an active spirit abroad to produce a reform in this particular. In the course of time, I should hope a better system of road laws would be proposed, with the general assent of the community; for I am aware that no compulsory laws on this subject will be available, unless they have been previously sanctioned by the public voice.

The Secretary of State will present to you a full report of the condition of the common schools, and the operation of our poor laws.

On these subjects, I am not aware that any material legislation is necessary at this time. Both of the systems operate successfully; and from the public interest excited in their favor, and their intrinsic merits, such defects as shall be developed will not fail to be presented for correction to the proper tribunal.

The number of school districts and pupils instructed, have increased since the last year. There are nine thousand three hundred and sixteen school districts in the State, and eight thousand eight hundred and eighteen of them have made returns according to the statute. The returns shew five hundred and eight thousand six hundred and fifty-seven children between the ages of five and sixteen years; and that five hundred and five thousand nine hundred and forty-three have been instructed in the schools from which returns have been received. The amount of money paid to teachers, derived from the public treasury, town taxes and funds, and voluntary contributions, is six hundred and five thousand seven hundred and twenty-nine dollars.

The county poor-house system has been voluntarily assumed by so many counties, that we are permitted to hope that no compulsory legislation will be necessary to ensure its universal adoption. It has had the effect of providing more effectually and comfortably for the needy, and of repressing idleness; and when in complete operation, it will save to the people of the State, in poor rates alone, an amount equal to one-half, and probably much more, of the ordinary expenses of administering the government.

May I not, in behalf of a class of beings, too powerless in all respects to lay their griefs before you, pray your early attention to their claims upon the paternal care of the State? Two years since,

I called the attention of the Legislature to the condition of our insane poor. A committee of three highly intelligent members were appointed to collect information on that subject, during the recess of the Legislature, and to visit the hospitals for the insane, both in our own and the neighboring States. They made a report to the Legislature, at the last session, which embodies a vast amount of information upon a subject but little understood by the public, and presents powerful motives for legislative action. Recent discoveries shew that insanity invariably proceeds from a disordered body; that it becomes incurable from neglect and harsh treatment; and that of recent cases, at least nine-tenths are discharged from hospitals properly conducted, restored. These facts speak volumes of reproof to us, for having so long neglected the subject. With that report before them, and a recollection of what they must have seen and felt if they have ever looked into a maniac's cell in a county poor-house, I cannot believe that the members of the last Legislature refrained from establishing a system of relief for insane poor, on any other account than the want of time, and the pressure of accumulated business. I recommend the subject to you as worthy of your first care, in the hope that it will not be put aside for measures of less public importance, urged forward with the ardor of personal interests.

There is another subject which deserves to be mentioned in connexion with this: I allude to a penitentiary for females. The want of such an institution is an acknowledged evil; and the remedy for it has been frequently discussed in the Legislature, without coming to any result.

The female convicts belonging to the prison at Sing-Sing are kept in a department of the alms-house in the city of New-York, prepared for that purpose, at the great expense of one hundred dollars each. Their number was forty-nine on the 19th day of December last. The number of female convicts at Auburn was, on the 17th December last, twenty-nine, who, for want of other accommodations, are confined together in one room. Among them are some of the most profligate of their sex, mingled with others, who, under proper restraint and instruction, might be reclaimed. The keepers find it beyond their power to preserve order among them. On a late visit there, I noticed the decent demeanor of a female, whose sentence of death for murdering her husband, had been commuted by me to imprisonment for three years, under a belief that she had produced the death by inadvertence, and from representations that



she was of good character, but ignorant. The keepers informed me that her conduct had been orderly, and that she submitted with patience and gratitude to what she considered punishment administered with justice and great mercy. This is an extreme case of an individual remaining unharmed by that contaminating association; but there is an intermediate class of partially depraved young persons, who cannot escape utter pollution.

While I renew the recommendation, that a separate penitentiary be provided for female convicts, I remain of the opinion that it should be built at Sing-Sing, so as to be under the superintendence of the officers of that institution. There would be a great saving in the expense of building and managing such a prison at that place; and reasons of a moral nature should influence the choice of a site in the vicinity of the city of New-York.

To improve the condition of the county prisons should be an ever present care of the representatives of the people. In their present condition they are a prolific source of crime. Those prisons should be so arranged and managed as to hinder their inmates from contaminating each other, and to prevent the growth of those parent vices, idleness, gambling and drunkenness. This subject should not be suffered to rest until a uniform improved system pervades our State.

I need not urge upon you the importance of striking at the root of crime. Every successful measure of that tendency strengthens the bonds of society, lessens the amount of human misery, and diminishes the expenses of government in regard to pauperism and crime. The age in which we live is distinguished by the many successful efforts which have been made to diminish the provocatives, as well as to correct the predisposition to vice. It may be hailed as the glorious epoch when public opinion has chained to narrow limits that devouring monster intemperance; and when untiring philanthropy has perfected a system of instruction which promises much for the general diffusion of knowledge, and its results, the love of virtue and liberty. A system of infant instruction, which was originally devised for charity scholars, has been found so attractive to children, and so perfectly adapted to their instruction in the rudiments of science, that teachers, initiated into all its mysteries, are establishing schools upon that plan, throughout the country, for the reception of pay scholars. Children are taken care of in these

schools, at an age so very early, that it is of importance to mothers, who are compelled to labor, to place their infants in them.

I think it not improper to notice an interesting experiment now in progress in the village of Rochester, to combine mechanical labor with instruction in those sciences which appertain to a liberal education. The pupils rise at four o'clock, work three hours and study ten. I have looked over an account which has been kept with twenty students during the last quarter, and they are credited for earnings in coopering, joiner's work and printing, a sum amounting to a trifle short of all the charges against them. Mechanical alternates better with study, than agricultural labor. The institution was founded last spring; it numbers now sixty-one pupils, and bids fair to realize the expectations of its generous patrons.

Our higher seminaries of learning, as creations of legislative wisdom, deserve legislative patronage, that they may fulfil the object for which they were founded.

Our state prison discipline is continued with the same results, which have given to the system its high reputation. The two hundred cells, ordered to be built at Sing-Sing, have been completed, and all of them will be soon occupied. That prison now contains one thousand cells; and nine hundred and sixty-three convicts were confined in them on the 19th day of December last.

Having been informed that there was a surplus number of convicts at that prison, and learning that they might be better accommodated at Auburn, I ordered sixty to be removed to the latter place, which was done early in the month of November last. I thought it expedient to adjust the matter thus between the prisons, both of which had a surplus, and not to alter the districts again, until the Legislature had signified its pleasure in regard to further appropriations for building. As now arranged, all the increase goes to Sing-Sing; indeed the number at Auburn, exclusive of those received from Sing-Sing, has declined twenty-nine since the the first day of January, one thousand eight hundred and thirty-one. Since the same time, the increase at Sing-Sing has been two hundred and forty.

If it is intended to persevere in a faithful experiment of our system, it is necessary that our prison room should be immediately enlarged. The number of male convicts at Auburn, on the 17th day of

December last, including those received from Sing-Sing, was six hundred and twenty-two. Of that number, five hundred and fifty are confined in single cells in the north wing, the rest are kept, two in a cell, in rooms prepared for them in the south wing. The south wing may be so altered, as to construct within it, upon the plan of the north wing, separate cells for as many convicts, as it will ever be thought proper to confine in that place. I recommend an appropriation for that purpose. It may be proper at the same time, to enlarge the prison at Sing-Sing. The reports of the inspectors of both prisons will, I hope, be sufficiently full to enable you to decide, at once, upon the subject.

The earnings of the convicts, at Auburn, continue to amount to more than enough to defray the expenses of that institution; and I am informed by the agent at Sing-Sing, that the prisoners at that place have earned during the last year, forty thousand dollars, besides building two hundred cells and one wing of a permanent stone shop, one hundred and fifty feet long, by thirty-six feet wide.

Our criminal code may be improved, by reducing the number of cases subject to capital punishment, and by enlarging the power of the courts to punish in some cases of peculiarly aggravated larcenies. The circumstances attending the late robbery of a bank in the city of New-York shew, that there are inducements for depredators to weigh, in advance, the value of expected booty against the power of the law to punish. This defect might be remedied by giving the court more discretion to punish for grand larceny, and by elevating in the scale of crime certain cases of burglary in the third degree.

Among the causes to which the increase of convicts in the state prison is to be attributed, a very principal one is the increase of state prison offences, introduced into the statutes, at the revision. The limited discretion of the court to punish misdemeanors, by imprisonment in the county prisons, operates, in my opinion, injuriously to the city of New-York, where they have a penitentiary as well adapted to the ends of punishment and reform as either of our state prisons. It is worthy of consideration whether the laws should not be so amended as to diminish the number of state prison cases; and to vest in the courts, particularly in New-York, the power to imprison for misdemeanors for such a period of time, as would produce a reasonable hope of amendment.

I renew the suggestion I made in my last message, that provision be made for taking the statistics of crime in this State. I am satisfied that proper returns would shew, that the apparent increase of convicts, is owing to causes other than a disproportioned growth of crime.

I have pardoned out of the state prison, during the last year, seventy-three convicts. A great proportion of these cases were brought to my notice without the intervention of friends, for many of them had none; and their claims to pardon, in some cases became equitable, on account of the mitigated punishments for similar crimes, prescribed by the revision of the laws.

There have been four cases of conviction for capital crimes reported to me, during the last year. In one of those cases I felt called upon by duty to arrest the execution; and I commuted the punishment to imprisonment in the state prison for seven years.

A law was passed at the last session to abolish imprisonment for debt; but its operation was suspended until the first day of March next, to enable the public to judge of its merits, and to afford an opportunity to make such alterations, as might be found necessary. The importance of that matter will induce you to give it an early consideration. The attainment of the desired object, with as little modification of the existing laws, and as few statutory provisions as possible, will be, undoubtedly, your aim. Brevity in laws leaves less to the discretion of the court, and brings them nearer to the common understanding.

A resolution passed both houses of the last Legislature to alter the constitution so as to admit a reduction of the duty on salt manufactured within this State to six cents a bushel. This will infringe upon no other interest, public or private, and is both just and politic. The Legislature will be enabled thereby, to relieve, when necessary, a branch of home industry, important to the country on account of the article, and to the government on the score of revenue. Those who have embarked their fortunes in a business which pays a duty of nearly double the value of the manufactured article, and who may be ruined by a change in the policy of our revenue laws, have a claim to be placed at least within the range of legislative discretion. I hope, therefore, that the resolution will receive your sanction, in order that it may be submitted to the people, at the next election, for their approbation as a proposed amendment of the constitution.

The reports of the Adjutant-General and Commissary-General, which will be forwarded to you in due season, will present the military force of the State. The number of the militia, as near as it can now be ascertained, is one hundred and eighty-nine thousand. We have in our arsenals forty-eight thousand, five hundred and forty-seven muskets, two thousand, four hundred and nine rifles, and three hundred and forty pieces of ordnance. Of the latter, about two hundred and twenty pieces are mounted for field service, and distributed to artillery companies.

It is believed that some improvements in the militia system are necessary to make it conform to the changes which have taken place in the condition of the country, since it was put in operation, that the public may be relieved of a portion of the burden, consistently with all the objects which it was intended to secure. If, on examination it should appear to the Legislature that the paramount powers of Congress over the subject, present an insuperable obstacle to the accomplishment of this object by state legislation, it will be worthy of consideration whether the Senators from this State ought not to be instructed to propose such amendments to the act of Congress, regulating the enrollment and organization of the militia, as may be necessary to secure the required relief.

Our claims upon the national government, on the ordnance account, have not yet been adjusted ; but I am assured that there is a probability of that matter being brought to a close during your present session.

Whatever will foster the great interests of agriculture, commerce and manufactures, cannot fail to engage your attention on that account. Although our former agricultural societies, from inherent defects, were speedily dissolved in most of the counties, yet they produced much good. I would recommend their revival by State authority, under an organization more simple, and therefore more durable. I should not advise the appropriation of any money out of the treasury, or the granting of power to raise any ; and I very much doubt the policy of granting any rewards or prizes. The main object of an agricultural society should be, to bring farmers together once or twice a year, to receive and communicate information on the subject of their pursuits, and to exhibit the productions of their farms, their industry and their skill. Under its patronage, and subject to its government, well regulated fairs might be permitted to become permanently established.

It is not forty years since cotton began to be cultivated in our southern States as an article of commerce, and sugar has been much more recently introduced ; yet now they are the staple commodities of many of those States. Most articles of culture are said to flourish best near the northern margin of the zone of their growth : thus, the Sea Island cotton, transplanted from a more southern latitude, has attained to a length of staple, beauty and strength of fibre, in some of our southern States, which renders it an unrivalled article in market ; and the sweet potatoe, indigenous under a tropical sun, where it expends itself in vines, becomes a valuable edible in a more northern situation, and flourishes well even in this climate. With such results before us, we should not despair of seeing the vine, the mulberry, and various productions of our own and more southern latitudes, which are not now raised, or for the cultivation of which feeble attempts are made, among the ordinary productions of our agricultural industry.

The United States census having been completed, it will devolve upon you to reorganize the districts for electing representatives in Congress. I presume the ratio will be determined upon in season, to enable you to discharge that duty before your adjournment.

Several communications, received from the respective Governors of the States of New-Hampshire, Maine, Connecticut and Delaware, accompanied by reports and resolutions from the several Legislatures of their respective States, are transmitted to you herewith.

I respectfully commend to your patronage those survivors of the revolutionary war, however inconsiderable their services may have been in the army, who have not been provided for by the government. Among them are some whose sacrifices were great, and whose services, although of an unpretending nature, were of great importance to the country. To make liberal provision for their wants, is an act which would leave no regrets ; and it should be our pride in this day of our prosperity, to cherish those venerable remnants of a by-gone heroic age. An early expression of your wishes in their behalf, may quicken the action of that body upon whom the obligation rests.

Permit me, in conclusion, to assure you of my readiness to co-operate with you in all such measures as tend to strengthen our political institutions, to promote the honor and prosperity of the country, and to add to the happiness of our fellow-citizens.

E. T. THROOP.

*Albany, January 3, 1832.*

[S. No. 1.]

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**No. 2.**

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**IN SENATE,**

**January 3, 1832.**

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**DOCUMENTS**

**Accompanying the Governor's Message.**

[No. I.]

**STATE OF CONNECTICUT,** }  
*Executive Department, June 30th, 1831.* }

**SIR—**

In compliance with a resolution of the General Assembly of this State, I herewith transmit to you a copy of a report adopted, and of resolutions passed by that body, at its late session.

I have, Sir, the honor to be,

Very respectfully,

Your obedient servant,

**JOHN S. PETERS.**

*To His Excellency, the Governor of New-York.*

**REPORT AND RESOLUTIONS.**

*At a General Assembly of the State of Connecticut, holden at Hartford in said State, on the first Wednesday of May, in the year of our Lord one thousand eight hundred and thirty-one.*

The Joint Committee, appointed to take into consideration such part of the Message of the Governor as relates to the Constitution and Judiciary of the United States, with the accompanying documents relative to those subjects,

**REPORT :**

That they have had under consideration the part of the Message of the Governor referred to them; and also a communication from the Governor of Vermont, covering certain resolutions of the Legislature of that State relative to the amendments of the Constitution of the

[S. No. 2.]

United States, proposed to the Legislatures of Georgia and Louisiana, touching the manner of election, and the term of service of the President and Vice-President of the United States. The Legislature of this State, at their session in 1830, having passed an opinion upon this subject, in which your committee fully coincide, they deem it unnecessary to go into it again.

Your committee have also had under consideration certain resolutions of the General Assembly of Ohio, relative to appropriations made by the General Government in aid of the colonization society. As it does not appear that the government have ever made, or contemplated making, such appropriations, this Legislature will doubtless concur with the General Assembly of Ohio, in the opinion that it is premature and inexpedient to express any opinion whether such appropriations be or be not constitutional.

Your committee have also had under consideration certain resolutions of the Legislature of the Commonwealth of Massachusetts, relative to the judicial power of the United States; a subject of sufficient importance to justify a more extended notice.

At a period when, in some portions of our country, a disposition is manifested to array the jealousies of the people against the judicial department of the Government of the United States; when executive officers are instructed, in all the formality of legislative enactment, to disregard the legal precepts of the Supreme Court of the United States, it well becomes those who regard a dissolution of our Union as one of the most dreadful of political evils, to interpose a mild, but firm expression of their opinion. The People, by their sovereign pleasure, created by the same act the executive, legislative and judicial departments of the Federal Government. The inefficiency of the old confederation to secure respect and obedience, taught them the necessity of so organizing the Federal Government, that it could lay its hand upon individuals, and thus directly enforce the laws of the Union, and protect those acting under them from injury or interruption, by the laws of any one of the States. It was the force of external circumstances only, that gave to the recommendations of the old Congress the authority of laws. When the outward pressure was removed, the Union was practically dissolved, and anarchy ensued. Without the judicial department the Congress of the United States would now be but an assemblage of ambassadors, whose efficiency would begin and end in advisory consultations: the people would obey, or not, as their interest and feelings might dictate. The courts of the several states partake, too readily, of local jealousies and excitements, to be entrusted with the final determination of questions involving the validity or construction of the federal laws; and questions of policy of much less importance than those which now agitate our country, would soon put an end to our ephemeral Union. The judicial department, therefore, constitutes one of those peculiarities which distinguish the present government from the old confederation—a co-ordinate branch—which, in the opinion of your committee, is absolutely necessary for the successful organization of our government.

It being one of the first principles of a republic, that the legislative and judicial departments be kept entirely distinct, the patriot has nothing to apprehend from the power or ambition of the courts. Speaking of the three great departments, an eminent civilian says, "the judiciary is next to nothing." It has indeed no power over the wealth or strength of the nation. It has neither force nor will, but merely judgment, and cannot enforce even that, without the aid of the execution. Without the parade or pomp of power, with no influence even, except such as profound learning, enlarged philosophy and distinguished talents always exert over the human intellect, the great questions of constitutional right and private obligation are quietly discussed, settled and recorded—the judges retire from the bench, and the decree is enforced by other hands. Where the legislative power is absolute, the judiciary, if there be one, is but the register and executioner of its edicts; but in a government of defined and limited powers, like that of the United States, where the people, in the great charter of their liberties, by which they have created the Legislature, have also, in the same instrument, prescribed the objects and the extent of the power of that Legislature, an independent judiciary is absolutely indispensable, for the protection of the people in their reserved rights, and for the preservation of every department of the government in its appropriate and destined action. It is, indeed, the great balance wheel of the constitution; which from its own weakness needs, and its inestimable value deserves the constant care and vigilance of the community, to protect it from the attacks of the other departments of the government, both state and federal. It should be composed of our most pure, wise and able men, placed permanently in their offices and salaries, where no fear can intimidate, nor hope seduce them. Although our government has secured the services of men of the greatest virtue and talents, yet neither their private worth, their public services, nor the inestimable value of their official functions, have been sufficient to protect them from the operation of local factions and jealousies. In view of these various considerations, your committee would recommend the adoption of the subjoined resolutions, as declaratory of that portion of the public opinion, which this Legislature has the honor to express.

Signed per order,

WM. W. BOARDMAN,  
*Chairman.*

*Resolved by this Assembly,* That the constitution of the United States, and the laws and treaties made in pursuance thereof, are the supreme law of the land; and the judges and magistrates, in every state, are bound thereby, any thing in the constitution or laws of any state, to the contrary notwithstanding.

*Resolved,* That we regard the judicial department of the government of the United States, as sacred in its origin, and as invaluable in its purposes and objects, as either the executive or legislative departments; and we also regard the designs of any community to de-

stroy it, or to paralyze its influence, among the people of these states, as the manifestation of feelings unfriendly to the permanent interests of our common country.

*(A true copy of record.)*

Examined and certified by

THOMAS DAY,  
*Secretary.*

[No. II.]

## STATE OF MAINE.

EXECUTIVE DEPARTMENT, }  
*Portland, October 26, 1831.* }

SIR—

Agreeably to a duty assigned me by the Legislature of the State of Maine, I have the honor herewith to transmit to your Excellency the accompanying report and resolve respecting the tariff and internal improvements, for the purpose of being submitted to the Legislature of your State.

With the highest respect and consideration,

I am, Sir, your obedient servant,

SAM'L E. SMITH.

*To His Excellency Governor of New-York.*

STATE OF MAINE. }  
*In Senate, March 29, 1831.* }

The Joint Select Committee to which was referred so much of the Governor's message as relates to internal improvements and surplus revenue; and to which were also referred the resolution of the General Assembly of the State of Delaware, approving the tariff of 1828; the resolutions of the General Assembly of the State of Louisiana, approving the tariff; and the report and resolutions of the General Assembly of the Commonwealth of Kentucky, advocating a system of internal improvements to be executed by the Federal Government and approving the tariff, have had the same under consideration and submit the following

## REPORT:—

The power of the government of the United States to lay and collect taxes, duties, imposts and excises for the purpose of paying the debts and providing for the common defence and general welfare of the Union is expressly granted in the Constitution, and, it is believed, has never been denied by those, who are opposed to, and oppressed by the tariff of 1828. The complaints, which have been made, and justly, against the tariff, are that it is unequal in its operation, unnecessarily oppressive, and imposes upon the people a burdensome taxation, indirect, it is true, but not the less onerous and grievous, for objects evidently not contemplated by the Constitution, and, therefore, not authorized by that instrument.

The committee can not concur in the opinion, expressed by the General Assembly of Kentucky, that "the grant in the Constitution to Congress of the power to lay and collect taxes, duties, imposts and excises is *without limitation*, except that they shall be uniform throughout the United States, and except also in the case of direct taxes, that they are to be apportioned among the several States, according to their respective numbers, determined by a prescribed

rule." The grant of this power is most obviously limited and restricted to the raising of a revenue for the purpose, as before stated, of paying the debts and providing for the common defence and general welfare of the Union. These purposes can be legitimately executed by the Federal Government only by the exercise of the powers granted in the Constitution to Congress, and in the manner and to the extent by that instrument prescribed. It is believed, that the doctrine advanced by Kentucky is too broad and that it does not find support in the Constitution. It asserts a power in Congress to raise money for all purposes without limitation, except as to the manner. But will it be pretended, that Congress can, under that grant of power, lay and collect taxes, duties, imposts and excises for the purpose of maintaining an army in Europe to coerce and compel the people of any nation to there to submit to the existing government? for the purpose of constructing roads and canals in France? or for the purpose of paying the national debt of Great Britain? No one will contend that Congress can do so. Neither will it be pretended, that Congress can lay and collect taxes for the purpose of paying the debts of the individual States, or the debts of private corporations, from whatever source they may derive their existence, or for the purpose of supporting the gospel ministry in the several towns and cities in the Union, however extensively such an expenditure might promote the general welfare. It is clear, then, that the power of Congress to raise money is not without limitation, except as to the mode of raising it, and can be legitimately exercised only for certain purposes; the purposes, and those only, for which the Federal Government was established.

And what are the purposes for which the several States confederated and formed the government of the United States? Certainly not for the management of the domestic concerns of the individual States, for each State still retains absolute sovereignty over her domestic affairs. The several States by their compact of Union, the Constitution of the United States, united so much of their individual sovereignty, as was sufficient to place them in the position, in relation to all other sovereign States, of an individual sovereign power, leaving each State, as it respects its internal concerns, a separate and independent sovereignty; and, when they granted to the Federal Government so much power as would enable it to maintain that position for the common defence and general welfare of all the States, as a whole, so far as foreign nations were concerned, they also granted to that government the power, and imposed upon it the obligation, of securing inviolate to each of them respectively its individual sovereignty over its own domestic affairs. The great objects to be effected and accomplished, by the establishment of the Federal Government, appear to be, to protect and defend each and all the States against the action of foreign governments, by making all the States one and indivisible as to those governments; to prevent collision and preserve harmony among them, as separate sovereignties; to secure to each a republican form of government, and by consequence to prevent the coalition, or consolidation of the several States into a government, inconsistent with the individual sovereignty of each,

It is believed, that these are the objects intended to be effected by the formation of the Union, or confederation, existing between the several States, and that the powers, granted in the Constitution to Congress, and intended to be exercised by the government of the United States, all look to *their* accomplishment. Any exercise of power, therefore, by the Federal Government, however it might, in the estimation of that government, tend to promote the general welfare of the several States, unless it relates to these objects and is specifically delegated in and by the Constitution, or is necessary to the execution of a specifically delegated power, is wholly unauthorised, and must be regarded as an encroachment upon the rights of the States, or of the people.

The question then occurs ;—Is the power of raising a revenue for the purpose of making internal improvements, such internal improvements, as the several States, in their individual character, are competent, without the aid or consent of the Federal Government, to make, in the manner and at the times, each State may deem it proper, a power necessary to effect the objects for which the Union was formed? and is it granted in the Constitution to Congress? That this power is expressly granted no one will pretend. Is it then incident to any power so granted? If it be incident to any power specifically granted, it must be necessary for carrying that power into execution. But which of the powers expressly granted to Congress, it may be asked, can not be fully exercised and executed without the power of making those internal improvements, which the several States are acknowledged to be competent to make without the consent of Congress? or rather, which of the powers expressly granted to Congress could not be completely executed, even if it had been expressly declared, in the Constitution, that Congress should not have the power to make internal improvements? It is believed no one, however strenuous an advocate for a system of internal improvements, will pretend, that Congress could not fully execute all the powers specifically granted in the Constitution, even if this power had been expressly denied. This power of making internal improvements, then, not being expressly granted in the Constitution, and not being incident to any power so granted, or in other words, this power not being one of “the powers delegated to the United States by the Constitution, nor prohibited by it to the States, is reserved to the States respectively, or to the people,” and, therefore, can not be legitimately exercised by Congress.

A system of internal improvements is clearly, then, not an object for which Congress has the power of raising a revenue, or for which any surplus revenue, in the Treasury of the United States, can be expended, under the existing Constitution. It has been very justly asserted by the Legislature of South Carolina, “that it is an unconstitutional exercise of power on the part of Congress, to tax the citizens of one State, to make roads and canals for another State,” and notwithstanding the broad and unqualified power, asserted in Congress by the General Assembly of Kentucky, to lay and collect taxes, duties, imposts and excises *without limitation*, except as to the mode, that General Assembly feels and admits the



force of the objection, but disavows the knowledge or belief "that Congress has ever, in fact, taxed the citizens of one State, to make roads and canals for another." "If that had been done," they say, "it would be admitted to be unconstitutional." If Congress has applied any portion of the funds of the general government, collected from the resources of the several States, or from their joint property, for the purpose of making roads or canals in individual States, have not the citizens not only of one State, but of all the States, in fact been taxed, not directly, but indirectly, to make roads or canals in a single State? The circumstance, that taxation for this purpose is indirect, cannot change the principle. That Congress has thus applied a part of the revenue of the United States, it is believed, none will deny. Will it, then, be pretended that the citizens of *one* State have not in fact been taxed to make roads or canals for another State, because the citizens of *all* the States have been taxed to the same extent for that purpose? If, then, this cannot be asserted, or pretended, with truth, and it cannot, unless the number of the citizens of *all* the States does not embrace and comprehend the citizens of *each* of the States, upon the principle unequivocally conceded by the General Assembly of Kentucky, it must be admitted, that the application of the funds of the United States, raised by "taxes, duties, imposts and excises," to the construction of roads and canals in the individual States, is unconstitutional.

While your committee believe, that no intelligent citizen of the United States will deny to Congress the power to lay and collect a *direct tax*, in want of funds obtained in the usual mode by duties on imports, for the purpose of constructing and maintaining fortifications in any one of the States for the defence of that State, they apprehend that few can be found, who would hazard their reputation for intelligence and discretion by asserting the power in Congress to lay and collect a *direct tax* for the purpose of constructing and maintaining roads and canals in the several States. And why, it may be asked, do not the advocates of a system of internal improvements, to be executed by the federal government, openly and boldly maintain the power in Congress to raise money by *direct taxation* for that purpose? Congress can certainly lay and collect a *direct tax* for any purpose for which it can raise a revenue by *indirect taxation*, in the shape of duties on imported articles, such as is imposed by the Tariff; and if it is admitted, that Congress can constitutionally impose duties on imports for the purpose of carrying on a system of internal improvements, it must also be conceded, that it has the power to impose *direct taxes* upon the people for that purpose. And it may safely be predicted, that as soon as the means, derived from the *former* source, prove insufficient, resort will unquestionably be had to the latter, if the several States, disregarding their interests and individual rights, acquiesce in and countenance the exercise of the power, assumed by Congress, to make appropriations of the funds of the United States for the purposes of internal improvements. But the friends of this system carefully and studiously keep out of view this most certain and unavoidable consequence of their loose construction of the Constitution, *direct taxes*

upon the people, to any extent Congress shall think proper to fix. Let the people admit the soundness and correctness of this doctrine, and they may expect in a few years a Tariff more ruinous, than the present, to the commercial interests of the country, and with that *direct taxation*; they may expect, and they will most assuredly find, that burdens, grievous to be borne, will be imposed upon them, both by direct and indirect taxes. Let the States yield up their rightful jurisdiction over "internal improvements" to the general government, and let the people sanction the doctrine, which asserts in Congress, under the present Constitution, the power to make them; and there can be no bounds set to the innovations, which the federal government may claim to make in the administration of State affairs, under the name of what she may determine to be *internal improvements*; the general government might determine, if she were permitted to adopt all measures, which may be supposed to promote the general welfare, that a change in the Constitution and laws of the several States, would be greater internal improvements than the construction of roads and canals; and, if the States supinely acquiesce in the assumption of power by Congress to make *internal improvements* by constructing roads and canals, what security is there to the States and to the people, that the general government will not assume to make what she may consider internal improvements, by changing the Constitution and laws of the several States, whenever she may think the *general welfare* may be thereby promoted?

These are only a few of the ruinous and monstrous consequences which must be expected to result, from the exercise of a power by the general government to execute a system of internal improvements; a power which, it is admitted, is not expressly given in the Constitution to Congress, and which that body can claim to exercise only by a forced and latitudinarian construction of the Constitution. This system, which Congress have not the rightful power to execute, and which could not be executed by the general government, if she had the necessary power, without resorting to a *tariff* much higher than that of 1828, and also to *direct taxation* upon the people, if the system is to be carried on to an extent corresponding in any degree with the views and wishes of its advocates, is no other, than the system falsely and absurdly called the "*American System*." This system, that appears never to have been contemplated by the framers of the Constitution, which is the supreme law of the land; which expresses all the powers intended to be vested in Congress, and which ought to be construed in favor of those, who granted the powers therein enumerated and upon whom they are to be exercised, and most rigidly and strictly against those by whom those powers are to be executed, is attempted to be supported and carried into effect by a construction of the Constitution, that, if sanctioned, will justify the exercise of any power by Congress, which that body may choose to assume. This system, which, if adopted, will tend to the certain destruction of the State sovereignties, finds advocates among patriotic citizens, because the designing

and ambitious, by successful artifice, have concealed its ugliness and deformity, and even made it appear beautiful and fascinating, by clothing it in a garb furnished by a name, "*The American System*."

Let this system be sanctioned without an amendment to the Constitution, and one step, or to speak more properly, an alarming stride, is taken towards the destruction of that, which to the friends of civil liberty and republican institutions is most dear, a written Constitution. Let the advocates of a system of internal improvements, to be executed by the general government, succeed in their objects, without an amendment of the Constitution of the United States, and the true AMERICAN SYSTEM, that upon which all our hopes of maintaining a republican government and free institutions depend, will inevitably be demolished, and the fair and noble edifice, which our fathers erected for our protection and happiness, instead of being preserved for the benefit of posterity, will fall in undistinguishing ruin, as well upon the heads of the innocent, as of those, whose sacrilegious hands shall remove its supporting pillars. The only system that is worthy of, or that ought for a moment to be admitted to be entitled to, the name of "THE AMERICAN SYSTEM," is that, which appears in the *written Constitutions* of the United States and of the several States, and this system can only be preserved by a rigid and scrupulous adherence, in the most minute particulars, to the principles in them established, and by frowning with indignation upon all and hurling them from places of trust, who shall seek to exercise powers not delegated to them by the Constitution, or seek to accomplish objects other than those for which they may be placed in power. This system of written Constitutions needs not the aid of constructive powers to carry it into full and complete effect. It provides by its own prescribed rules for enlarging or modifying the powers of the servants of the people; and when the powers already granted to their servants are found to be too limited, the people, who are the only proper judges of what powers ought to be delegated, will enlarge the powers granted, or give others, according to their sovereign will and pleasure, the only power having control over Constitutions. This system requires all placed in office to exercise only so much power as is plainly given in the written rule by which their conduct is to be governed, and to abstain from the exercise of all doubtful power, however usefully such power might be exercised, if granted; because it is a material part of the system, that public servants, whether they act individually, or in legislative bodies, shall exercise no power, except what is clearly granted by a written Constitution, or other law, interpreted according to its plain and obvious meaning.

This system can alone claim the honorable and distinguishing appellation and title of the *American System*, and every system which is found to conflict with the principles of this, must be rejected and detested, however fascinating and alluring it may appear under the garb of a borrowed, or stolen, name. And the system of internal improvements, to be executed by the general government, must be regarded as conflicting with the *American System*, because it can only be carried into effect by the exercise of a power not delegated to Congress; because it proposes to effect objects by the

exercise of *constructive* powers, which would unquestionably have been expressly granted to the federal government, if it had been intended that that government should exercise them, and because it proposes to subject to the action of the general government those things, which are more appropriately subject to the action of the State governments, and which the latter governments are perfectly competent to manage, without the aid or consent of the United States.

Whatever other powers Congress may possess, your Committee are satisfied, that the power of executing a system of internal improvements does not belong to the federal government, and they most fully concur in the justness of the remarks, contained in the Governor's Message, that "the course, which has been pursued by the general government in the appropriations for the purposes of internal improvement, from the direct bearing, which it has upon the equal rights, interests, and sovereignty of the individual States, has become a subject of too great importance to be now regarded with indifference, or suffered to pass by without being presented to the consideration of the Legislature and people of this State. If it should continue to be the policy of the United States to raise an annual revenue from duties on imports and from other sources, more than sufficient for the gradual extinction of the public debt, and the ordinary expenses of the government, the surplus fund will remain in the national treasury, without any benefit resulting therefrom to the people, or some constitutional mode must be devised for its appropriation and expenditure."

Believing that the States are fully competent, and better qualified, than the general government, from their more intimate knowledge of the wants of the people, to make internal improvements, to the extent required and at the most suitable times, according to the ability of the people to contribute to those objects; that no more money should be collected into the national treasury, than the ordinary exigencies of the government require; that much money must be lost to the people by collecting it into the national treasury for distribution among the several States, and that that policy is best calculated to promote the true interests of the people, which requires the *least taxation*; and believing also that every attempt, by public functionaries, to exercise powers not delegated to them, should meet the marked disapprobation of the several States, as tending to the injury of the people, by marring the true American System and violating its essential principles, and as encroaching upon the rights of the States; your committee, therefore, recommend the passage of the following Resolutions.

JOHN L. MEGQUIER, *Chairman*.

IN SENATE, March 29, 1831.—Read and accepted. Sent down for concurrence.

ROBERT P. DUNLAP, *President*.

HOUSE OF REPRESENTATIVES, March 30, 1831.—Read and concurred.

BENJA. WHITE, *Speaker*.

## STATE OF MAINE.

*Resolve respecting the Tariff and Internal Improvements.*

*Resolved*, That the Government of the United States, not having the power of executing a system of internal improvements expressly granted to it in the Constitution, and that power not being necessary for carrying into execution any powers so granted, ought not, in raising a revenue, to consider internal improvements among the purposes, for which it may lay and collect taxes, duties, imposts and excises.

*Resolved*, That the Tariff of duties on imports ought to be so modified, if possible, a due regard being had to all the interests of the country, that the receipts, from them and the other sources of revenue, into the treasury of the United States shall not greatly exceed the ordinary annual expenses of the Government.

*Resolved*, That, if with a due regard to all the essential interests of the country the duties on imports cannot be so reduced, that no surplus fund shall remain in the national treasury, after paying the ordinary and necessary annual expenses of the government, such surplus ought to be equitably distributed among the several States in a mode and by a rule to be prescribed by an amendment to the Constitution.

*Resolved*, That the Governor be, and he is hereby requested to transmit a copy of the foregoing Report and Resolutions to the Executive of each of the States, that they may be submitted to the Legislatures of the same for their consideration; and also a copy to each of the Senators and Representatives of Maine in Congress.

IN SENATE, March 29, 1831.—Read and passed. Sent down for concurrence.

ROBERT P. DUNLAP, *President*.

HOUSE OF REPRESENTATIVES, March 30, 1831.—This Resolve was read twice and passed in concurrence with the Senate.

BENJA. WHITE, *Speaker*.

[No. III.]

STATE OF NEW-HAMPSHIRE, }  
*Executive Department, Concord, Oct. 10th, 1831.* }

Sir—

I hereby transmit to you a copy of a resolution adopted by the Legislature of this State at the last session.

I have the honor to be,

Sir, with great respect,

Your most obedient servant,

SAMUEL DINSMOOR.

*To his Excellency the Governor of New-York.*

*Resolved*, by the Senate and House of Representatives in General Court convened, That the Senators of this State in the Congress of the United States be instructed, and the Representatives requested, to use their exertions to procure the passage of a law for the more perfect organization of the militia of the several states.

*Resolved*, That his Excellency the Governor be requested to transmit copies of these resolutions to the Senators and Representatives of this State in Congress, and also to the Governors of the other States, that the same may be submitted to the Legislatures thereof for their consideration.

*Approved, July 1, 1831.* (A true copy.)

RALPH METCALF,  
*Secretary of State.*

1. *Introduction*  
 2. *Background*  
 3. *Methodology*  
 4. *Results*  
 5. *Discussion*  
 6. *Conclusion*  
 7. *References*  
 8. *Appendix*  
 9. *Index*  
 10. *Table of Contents*  
 11. *Abstract*  
 12. *Summary*  
 13. *Key Words*  
 14. *Keywords*  
 15. *Subject Headings*  
 16. *Subject Headings*  
 17. *Subject Headings*  
 18. *Subject Headings*  
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[No. IV.]

EXECUTIVE DEPARTMENT, }  
Georgetown, March 4th, 1831. }

Sir—

I have the honor herewith to transmit to your Excellency, a copy of the resolutions of the General Assembly of the State of Delaware, in relation to the Tariff of the United States, and to internal improvements.

Very respectfully,  
I have the honor to be,  
Your obedient servant,  
DAVID HAZZARD.

*To his Excellency the Governor of the State of New-York.*

IN THE GENERAL ASSEMBLY, }  
January Session, 1831. }

The committee to whom was referred so much of the Governor's message as relates to the tariff and internal improvements; and to whom was also referred sundry resolutions of the General Assembly of the States of Pennsylvania, Connecticut, Louisiana, Ohio and Kentucky, approbatory of the tariff of 1828, have had those subjects under consideration, and beg leave to report the following resolutions:

*Resolved*, by the Senate and House of Representatives of the State of Delaware in General Assembly met, That this General Assembly do concur in the resolution of the General Assembly of the State of Pennsylvania by which it is declared, "that the tariff of eighteen hundred and twenty-eight accords with the spirit of the constitution of the United States, and that it maintains the true principles of protection to the industry of the country against foreign policy and legislation;" and also in the opinion of the General Assemblies of the States of Louisiana and Vermont, in which they have declared the law of 1828, on the tariff, to be expedient and harmless to the southern States.

*Resolved*, That the construction of works of internal improvement by Congress, is, in the opinion of this General Assembly, not only within the constitutional powers of the Congress of the United States, but that the exercise of such power is highly expedient.

*Resolved further*, That the Governor of this State be requested to transmit copies of the above resolutions to our Representative and our Senators in Congress; and also to forward a copy to the Governors of the several States, with a request that they will lay the same before their respective Legislatures.

*Adopted: January 12, 1831.*

JOSHUA BURTON,  
*Speaker of the House of Representatives.*

P. SPRUANCE, JR.  
*Speaker of the Senate.*



STATE OF DELAWARE, ss.

OFFICE OF THE SECRETARY OF STATE, }  
*Georgetown, Delaware, March 4, 1831.* }

I certify the foregoing to be a true copy of the original roll, remaining on file in this office.

CALEB S. LAYTON,  
*Secretary of State.*

[No. V.]

EXECUTIVE DEPARTMENT, }  
*Georgetown, March 4th, 1831.* }

Sir—

I have the honor, herewith, to transmit to your Excellency a copy of the Resolutions of the General Assembly of the State of Delaware, in relation to the surviving officers and soldiers of the Revolutionary army, &c.

Very respectfully,

I have the honor to be

Your obedient servant,

DAVID HAZZARD.

*To His Excellency the Governor of the State of New-York.*

*In the Legislature of the State of Delaware, at the January session thereof, in the year of our Lord one thousand eight hundred and thirty-one.*

The committee to whom was referred so much of the Governor's Message as relates to the surviving officers and soldiers of the Revolutionary army, who are not entitled to pensions under any existing law, beg leave to

**REPORT:**

That, having examined the memorial signed on behalf of the surviving officers and soldiers of the war of the Revolution, from the commencement of hostilities, in 1775, to the first day of October, 1780, the period at which the new organization of the army took place—Your committee is deeply impressed with the importance of the services rendered by the memorialists, and which were prompted by a spontaneous and disinterested patriotism. Your committee would, therefore, recommend the adoption of the following resolutions:

*Resolved by the Senate and House of Representatives of the State of Delaware, in General Assembly met,* That the Legislature of this State do fully accord with His Excellency, and with the sentiments expressed in the memorial by him alluded to: and that they feel that not only a debt of gratitude and respect is due to those venerable patriots of the Revolution, but that liberal and ample compensation should be awarded them; and that our Senators in Congress be instructed, and our Representatives requested, to use all proper means for effecting an object at once so laudable, so reasonable and so just.

*Resolved,* That His Excellency the Governor be, and he is hereby requested to forward a copy of the above preamble and resolu-

[S. No. 2.]

tion to each of our Senators, and to our Representative in Congress.

Adopted at Dover, January 27, 1831.

JOSHUA BURTON,  
*Speaker of the House of Representatives.*

P. SPRUANCE, JUN.  
*Speaker of the Senate.*

*The State of Delaware, ss.*

OFFICE OF THE SECRETARY OF STATE, {  
Georgetown, Delaware, March 4th, 1831. }

I certify the foregoing to be a true copy of the original roll, remaining on file in this office.

CALEB S. LAYTON,  
*Secretary of State.*

[No. VI.]

EXECUTIVE DEPARTMENT, }  
*Georgetown, March 4th, 1831.* }

SIR—

I have the honor, herewith, to transmit to your Excellency, the following resolutions of the General Assembly of the state of Delaware, relative to the Public Lands of the United States.

Very respectfully, I have the honor to be,

Your obedient servant,

DAVID HAZZARD.

*To His Excellency the Governor of the State of New-York.*

IN THE GENERAL ASSEMBLY, }  
*January Session, 1831.* }

The committee to whom was referred so much of the Governor's message as relates to the distribution of the revenue arising from the sale of the Public Lands of the Union among the several States for the purpose of education, &c.

**REPORT :**

That the citizens of this State view with deep solicitude the efforts lately made in the National Legislature to deprive the Atlantic States of their just and equitable rights to the Public Lands of the Union—Rights which they claim to hold in common with all the States, and which were asserted by, and conceded to them at the laying of the foundation of the Constitution of the Union. It is an inheritance which they claim as the purchase of their treasures and of their blood, and is too highly appreciated by them, to be relinquished without an equivalent, and too dearly bought to be wantonly lavished away.

The citizens of Delaware have beheld with pain and anxiety, attempts which have lately been made in Congress thus to deprive them of a conceded right, and dissipate the revenue derivable from those lands by forcing sales within a short period of time and at mere nominal prices. They consider such a scheme as nothing less than a virtual alienation of their right, and a wanton sacrifice of their interest to the cupidity and avarice of speculators, many of whom it would seem are as mercenary and unprincipled in their views, as they are active and vociferous in their support of them. The people of Delaware look forward to the time when the National debt shall have been liquidated (to the payment of which, the revenue accruing from the sales of Public Lands is pledged) as a suitable and auspicious period, after which the said revenue may be distributed among the several States of the Union for the purpose of extending the means of education, and thereby promoting the general welfare of the Union, strengthening its bands and perpetuating its blessings. Your committee would, therefore, recommend the adoption of the following resolutions :—

*Resolved by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That this Legislature views with a jealous eye every attempt to make a partial distribution of the Public Lands of the Union among the States, whether by direct grant to a State, or by nominal sales at reduced prices to the citizens thereof.

*Resolved,* That in the opinion of this General Assembly the revenue arising from the sale of the Public Lands of the Union, ought to be distributed among the several States, for the purpose of extending the means of education throughout the Republic, as soon as the liquidation of the National debt shall warrant the same.

*Resolved,* That our Senators and our Representatives in the National Legislature be and they are hereby requested to exert themselves to procure such an appropriation of the funds available from the sales of those lands, as shall foster and promote the cause of education throughout the Union.

*Resolved,* That this General Assembly do approve most heartily, the manly and able stand maintained by our Representation in the Senate of the United States, in defending and sustaining the right and interest of the State, upon the question of the disposal of the western dominions of the Union.

*Resolved,* That the foregoing report and resolutions be signed by the Speakers of the Senate and of the House of Representatives respectively, and that a copy be transmitted to each of our Senators and to our Representatives in Congress, and that the Executive of each state be furnished with a copy by the Governor, and requested to lay the same before their respective legislatures.

Adopted at Dover, January 28, 1831.

JOSHUA BURTON,  
*Speaker of the House of Representatives.*  
P. SPRUANCE, JR.  
*Speaker of the Senate.*

*The State of Delaware, ss.*

OFFICE OF THE SECRETARY OF STATE, }  
Georgetown, (Delaware,) March 4, 1831. }

I certify the foregoing to be a true copy of the original roll, remaining on file in this office.

CALEB S. LAYTON,  
*Secretary of State.*

(No. VII.]

EXECUTIVE DEPARTMENT, }  
*Georgetown, March 4th, 1831.* }

SIR—

I have the honor herewith to transmit to your Excellency, the following Resolutions of the General Assembly of the State of Delaware, relative to the amendments of the Constitution of the United States, proposed by the General Assemblies of the States of Louisiana and Missouri, and to request the same to be laid before the Legislature of the State over which you reside.

Very respectfully, sir,

I have the honor to be

Your obedient servant,

DAVID HAZZARD,

*Governor of the State of Delaware.*

*To His Excellency the Governor of New-York.*

*In the Legislature of the State of Delaware, at the January session thereof, in the year of our Lord one thousand eight hundred and thirty-one.*

The committee to whom was referred that part of the Governor's Message which relates to the amendments proposed by the General Assembly of Louisiana and Missouri, to the Constitution of the United States, have given to the subject their serious consideration, and it is the opinion of the committee that it is inexpedient at this time to make the proposed alterations. They therefore respectfully recommend the adoption of the following resolutions :

*Resolved by the Senate and House of Representatives of the State of Delaware, in General Assembly met,* That this General Assembly does not concur with the General Assembly of the State of Louisiana, in the proposal to amend the Constitution of the United States, so as to extend the term of office of President and Vice-President to six years, and to render the President ineligible.

*Resolved by the authority aforesaid,* That this General Assembly does not concur with the General Assembly of the State of Missouri in the proposal to amend the Constitution of the United States, so as to provide a uniform mode of electing the President and Vice-President of the United States, without the intervention of electors, and that the election of President and Vice-President should, in no case whatever, be submitted to the decision of the House of Representatives of the United States.

*Resolved,* That His Excellency the Governor be requested to forward copies of the foregoing resolutions to the executives of the

several states, with a request that they be laid before their respective legislatures.

Adopted at Dover, January 28, 1831.

JOSHUA BURTON,  
*Speaker of the House of Representatives.*

P. SPRUANCE, JUN.  
*Speaker of the Senate.*

*The State of Delaware, ss.*

SECRETARY'S OFFICE,  
*Georgetown, Delaware, March 4th, 1831. }*

I certify the foregoing to be a true copy of the original roll, as the same remains on file in this office.

CALEB S. LAYTON,  
*Secretary of State.*

**IN SENATE,**

**January 4, 1832.**

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**ANNUAL REPORT**

**Of the Trustees of the State Library.**

The Trustees of the State Library, in obedience to section four, title eight, chapter nine of the first part of the Revised Statutes, respectfully submit their

**ANNUAL REPORT.**

The amount remaining in the hands of the Treasurer of the Trustees at the close of the year 1830, as will appear by their last report, was..... \$755 14

And the Trustees have received from the Treasury the annual appropriation for the year 1831, ..... 1,000 00

And the amount appropriated from the Chancery fund, (1 R. S. 216, § 2,) for the year 1830, ..... 300 00

\$2,055 14

And they have expended since the 1st day of January, and up to the 30th day of September last, the close of the fiscal year, the following sums :

For books, maps, charts, and bookbinding,.. \$1,645 44

For cleaning the Library room, repairs to

book-cases, &c. .... 40 22

1,685 66

Leaving in the hands of the Treasurer of the Trustees, on the 30th September last,..... \$369 48

Some payments have been made since the close of the fiscal year, and some demands upon the Trustees for books and bookbinding



have not yet been discharged ; but the monies remaining in their hands will exceed the whole amount of the accounts that are yet outstanding.

By the act of 1829 concerning the State Library, (3 R. S. 174,) the contingent expenses of the Library, for stationary and candles, were limited to the sum of fifty dollars. During the year covered by this report, there has been no expenditure for stationary, and only the sum of \$9.72-cents for candles, which was paid out of the general appropriation in the hands of the Trustees. The wood purchased for the Library during the year, has cost \$43; which has been paid out of the Treasury. It is due to the Librarian to say that the contingent expenses have been kept within just and reasonable bounds, and that he has discharged all the duties of his office in a manner entirely satisfactory to the Trustees.

A catalogue of all the books, maps and charts in the Library, is herewith submitted ; which includes all the books now in the Library, although some of them have been received since the close of the fiscal year. They have also, for greater convenience, prepared a table of all the American reports in the Library, arranged in the alphabetical order of the States, which is annexed to the catalogue, and marked A. And a table marked B. annexed to the catalogue, contains a list of all the books added to the Library during the past year.

In pursuance of the intimation contained in their last annual report, the Trustees, during the last year, have imported, and made large additions to the Library of such books as could not be procured in this country. And they flatter themselves that with the continued bounty of the Legislature, the law part of this Library will soon be equal to, if it do not surpass any similar collection in the United States.

The rules and regulations for the government of the Library remain unaltered, and are herewith submitted, marked C.

Those who have had occasion to visit this institution, have borne ample testimony to the importance and utility of the new arrangement and thorough revision of the Library, mentioned in the last annual report of the Trustees.

Believing that they should best consult the convenience of the members of the Legislature by pursuing the course that was adopted last year, the Trustees have caused their report to be printed in anticipation of the meeting of the Legislature.

GREENE C. BRONSON,

SILAS WRIGHT, JR.

A. C. FLAGG,

*Trustees of the State Library.*

*Albany, Dec. 20, 1831.*



# CATALOGUE

OF

## BOOKS, MAPS, &c.

BELONGING TO, AND REMAINING IN THE STATE LIBRARY,

JANUARY 1, 1832.

N. B. All the Books enumerated in this Catalogue are bound, and of octavo size, unless otherwise expressly mentioned : Congressional and Legislative Journals will be found arranged under the head of "State Papers ;" and Statutes under "Statute Law."

### LAW BOOKS.

#### A.

	<i>Vols.</i>
Abbot on Shipping, .....	1
Acton's Reports, .....	2
Adams on Ejectment, see "Tillinghast's Adams on Ejectment."	
Addams' Reports, .....	2
Addington's Penal Statutes, (fol.) .....	1
Addison's Reports, (Pennsylvania,) .....	1
Admiralty Decisions, .....	1
Aikens' Reports, (Vermont,) .....	2
Alabama Reports, .....	1
Alleyn's Reports, (fol.) .....	1
Ambler's Reports, .....	1
American Chancery Digest, .....	1
American Digest, .....	5
American Jurist, .....	5
American Law Journal, .....	6
Anderson's Report, (fol.) .....	1
Andrews' Reports, .....	1
Angel on Tide-Waters, .....	1
"    "    Water-Courses, .....	1
Anstruther's Reports, (2 vols. in one,) .....	1
Anthon's Nisi Prius Reports, .....	1
Archbold's Civil Pleadings, .....	1
"    Forms and Evidence, .....	1
"    "    "    "    duplicate, .....	1
"    Practical Forms, .....	1
"    Practice, .....	2
Assize, Book of, see "Book of Assizes."	
Atkyns' Reports, .....	3
Attorney's Companion, .....	1
Azuni's Maritime Law, .....	2

## B.

	<i>Vols.</i>
Bacon's Abridgment, .....	7
Ball and Beatty's Reports, (Irish Chancery,) .....	2
Ballantine on Limitations, .....	1
"    "    "    by Tillinghast, see "Tillinghast's Ballantine on Limitations."	
Barnardiston's Reports, (fol.) .....	1
Barnes' Notes of Cases, .....	2
Barnewell and Alderson's Reports, .....	4
Barton's Suit in Equity, .....	1
Batty's Reports, (King's Bench, Ireland,) ....	1
Bay's Reports, (South-Carolina,) .....	2
Bayley on Bills, .....	1
Beawes' Lex Mercatoria, (4to.) .....	2
Beccaria on Crimes, .....	1
Beck's Medical Jurisprudence, ....	2
Bee's Reports, (U. S. District Court, South-Carolina,) ....	1
Bell's Commentaries on the Laws of Scotland, (4to.) .....	2
Belt's Supplement, see "Vesey Senior's Reports, Supplement."	
Benloe and Dalison's Reports, (fol.) .....	1
Bentham on Codification, .....	1
"    Government, .....	1
Bentham's Treatise on Judicial Evidence, see "Treatise on Judicial Evidence."	
"    Théorie des Peines et des Récompenses, see "Théorie des Peines et des Récompenses."	
Bibb's Reports, (Kentucky,) .....	4
Bigelow's Digest of Massachusetts Reports, (old edition,) ....	1
Bigelow's Supplement (to his Digest,) .....	1
Binney's Reports, (Pennsylvania,) .....	6
Biven's Digest of Modern Reports, (missing,) .....	1
Blackstone's Commentaries, (by Christian,) .....	4
"    (Henry) Reports, .....	2
"    (William) " .....	2
Blake's Chancery, (old edition,) .....	1
Bligh's Parliamentary Reports, .....	5
"    New Parliamentary Reports, .....	5
Book of Assizes, (fol.) .....	1
Booth on Real Actions, ....	1
Bosanquet and Puller's Reports, (4th and 5th volumes cited as "New Reports,") .....	5
Boscawen on Penal Statutes, (12mo.) .....	1
Brackenridge's Law Miscellanies, .....	1
Brayton's Vermont Reports, .....	1
Bridgman's Analytical Digest, .....	3
"    Practical Digest, .....	1
"    Index, see "Bridgman's Analytical Digest."	
"    (Sir John) Reports, (fol.) .....	1
"    (Sir Orlando) Reports, .....	1
Brown's (William) Chancery Reports, .....	4
"    (Josiah) Parliamentary Cases, .....	5

	Vols.
Browne's Reports, (Pennsylvania,) .....	2
Brownlow and Goldsborough's Reports, (4to.) .....	1
Bulstrode's Reports, (fol. 3 vols. in one,) .....	1
Bunbury's Reports, .....	1
Burlamaqui's Principles of Law, (Natural and Politic,) .....	2
Burn's Digest of Modern Reports, .....	1
" Ecclesiastical Law, .....	4
" Justice, .....	4
Burrows' Reports, .....	5
" Settlement Cases, .....	1

C.

Caines' Cases in Error, (New-York, 2 vols. in one,) .....	1
" Practice, .....	1
" Reports, (New-York,) .....	3
Call's Reports, (Virginia,) .....	3
Cameron and Norwood's Reports, (North-Carolina,) .....	1
Campbell's Nisi Prius Reports, .....	4
Carey's Reports, (24mo.) .....	1
Carter's Reports, (fol.) .....	1
Cartbaws' Reports, (fol.) .....	1
Cases in Chancery, .....	1
Cases of Equity, .....	2
Cases Tempore Hardwicke, (by Lee,) .....	1
Cases Tempore Hardwicke by Ridgeway, see "Ridgeway's Cases Tempore Hardwicke."	
Cases Tempore Talbot, (by J. G. Williams,) .....	1
Chancery Rules, (Edition of 1824,) .....	1
" " (Revised by Chancellor Walworth,) .....	1
Charlton's Reports, (Georgia,) .....	1
Charter of the City of New-York, .....	1
Chase's Trial, .....	2
Cherokee Case, .....	1
Chipman's (Daniel) Reports, (Vermont,) .....	1
" (Nathaniel) Reports, (Vermont, 18mo.) .....	1
Chipman on Contracts, .....	1
Chitty's Commercial Law, .....	1
" Criminal Law, .....	3
" Law of Prerogative, .....	1
" Pleadings, .....	3
Chitty on Bills, .....	1
" Contracts, .....	1
Christy's Digest of Louisiana Reports, .....	1
City Hall Recorder, (6 vols. in 2,) .....	2
Civil Code of France, see "Code Napoleon."	
Civil Code of Louisiana, see "Statute Law."	
Clancy's Treatise, (Husband and Wife,) .....	1
Code Napoleon, .....	1
Coke on Littleton, (First Institutes,) .....	3
Coke's Institutes, (2d, 3 and 4th,) .....	4
" Entries, (fol.) .....	1

	<i>Vols.</i>
Coke's Reports,.....	7
Coleman and Caines' Cases, (New-York,).....	1
Collectanea Juridica,.....	2
Comberbach's Reports, (fol.) .....	1
Commercial Code of France, .....	1
Common Law Reports, .....	18
Comyn on Contracts, .....	2
Comyn's Digest, .....	8
"    Reports, .....	2
Conkling's Treatise, .....	1
Connecticut Reports,.....	7
Constitutional Reports of South-Carolina, .....	2
Conversations on the English Constitution, .....	1
Cooper's Justinian, .....	1
"    Reports, (Chancery,) .....	1
Corbett and Daniell's Reports, (Election Cases,) .....	1
Corpus Juris Civilis, (4to.) .....	3
Cottu on the Administration of Criminal Justice, .....	1
County and Town Officer, .....	1
Cowen's Digest,.....	1
"    Reports, .....	9
"    Treatise on Justices' Courts, .....	1
Cowper's Reports,.....	2
Cox's Equity Reports, .....	2
Coxe's Digest of Reports of the United States Courts, .....	1
"    New-Jersey Reports, .....	1
Crabb's History of the English Law, .....	1
Cranch's Reports, (Supreme Court U. S.).....	9
Cresswell's Insolvency Reports, .....	1
Criminal Trials, .....	1
Croke's Reports, (Elizabeth, James and Charles,) .....	3
Crompton's Practice, .....	2
Crown Circuit Companion, ... ..	1
Cruise's Digest, (7 vols. in 5,) .....	5
Cumberland's Law of Nature, (4to.) .....	1
Curran's Speeches, .....	2

## D.

Dagge on Criminal Law, .....	3
Dallas' Reports,.....	4
Dane's Abridgement,.....	8
Daniell's Reports, (Exchequer,) .....	1
Danson and Lloyd's Reports, (Mercantile Cases,).....	1
Danvers' Abridgment, (fol.) .....	3
Davies' Reports, .....	1
Day's Reports, (Connecticut,).....	5
Debates on the Constitutional Powers of Congress, .....	1
De Lolme on the English Constitution, .....	1
Desaussure's Chancery Reports, (South-Carolina,) .....	4
Dickens' Reports, (Chancery,) .....	2
Dickinson's Justice of the Peace,.....	3

	<i>Vols.</i>
Dictionary of Quotations, (missing,) .....	1
Digest of Early Chancery Reports, (by Kekewich,) .....	1
Digest of South-Carolina Reports, .....	1
Discussions du Code Napoléon, (4to) .....	3
Doctors' Commons, ("The Clerk's Instructor in the Eccle- -siastical Courts,") .....	1
Dodson's Reports, (Admiralty,) .....	2
Domat's Civil Law, (fol.) .....	2
Douglas' Election Cases, .....	4
"    Reports, .....	2
Dow's Parliamentary Reports, .....	6
"    "    "    New Series, .....	1
Dowling and Ryland's Reports, .....	8
"    "    "    "    (Magistrate Cases,) .....	3
Dunlap's Practice, .....	2
Duponceau on the Jurisdiction of the Courts of the United States, .....	1
Durnford and East's Reports, .....	6
Dyer's Reports, (fol.) .....	1

## E.

East's Pleas of the Crown, .....	2
"    Reports, .....	16
Eden on Injunction, .....	1
Eden's Reports, (Chancery,) .....	2
Edwards' Reports, (Admiralty,) .....	1
Equity Draftsman, .....	1
Equity Reports, see "Desaussure's Chancery Reports."	
Espinasse's Nisi Prius, .....	2
"    Reports, (6 vols. bound in 5,) .....	5
Evans' Collection of Statutes, see "Statute Law."	

## F.

Fearne on Remainders, .....	1
Fergusson's Reports, (Divorce Cases,) .....	1
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Fitzherbert's Natura Brevium, .....	2
Fonblanque on Equity, .....	2
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Foster's Crown Law, .....	1
Fox and Smith's Reports, (2 vols. in one,) .....	1
Frederician Code, see "Statute Law."	
Freeman's Chancery Reports,] .....	1
"    Law Reports, .....	1
"    Reports, (fol.) .....	1
French Civil Code, see "Code Napoleon."	
Frie's Trial, .....	1

## G.

Gallison's Reports, (Circuit Court U. S. First Circuit,) .....	2
Gilbert's Cases in Law and Equity, .....	1
"    Equity, .....	1
[S. No. 3.] .....	2





Humphrey on Real Property, .....	Vols. 1
"    "    "    Duplicate, (boards,) .....	1
Hutton's Reports, (fol.) .....	1

## I.

Ingersoll's Digest, .....	1
Institutes of Civil Law of Spain, .....	1
Institutes of Justinian, see "Cooper's Justinian."	
Institutes of the Laws of Holland, (by Van Der Linden,) ....	1
Institutions Judiciaires, .....	5
Irish Term Reports, .....	1

## J.

Jacob's Law Dictionary, .....	6
"    Reports, (Chancery,) .....	1
Jacob and Walker's Reports, .....	2
Jenkins' Centuries of Reports, (fol.) .....	1
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"    Digest, (Old edition,) .....	1
"    "    (New edition,) .....	2
"    Reports, (New-York,) .....	20
Jones on Bailment, .....	1
Jones' (Sir Thomas) Reports, (fol.) .....	1
"    (Sir William) Reports, (fol.) .....	1
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Justinian's Institutes, see "Cooper's Justinian."	

## K.

Kames' Principles of Equity, see "Principles of Equity."	
Keble's Reports, (fol.) .....	3
Keilwey's Reports, (fol.) .....	1
Kelham's Fleta, see "Selden's Fleta."	
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Kent's Commentaries, .....	4
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Kyd on Awards, .....	1

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	<i>Vol.</i>
Latch's Reports, (fol.) .....	1
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"    Selected Cases, (Kentucky,) .....	1
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Lord Kenyon's Reports, .....	2
Lofft's Reports, .....	1
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Lutwyche's Reports, (fol.) .....	2

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Maddock & Geldart's Reports, (Chancery,) .....	1
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Manning & Ryland's Reports, .....	3
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Marshall's Kentucky Reports, .....	3
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"    "    "    (    "    2d series,) .....	8
Mason's Reports, (Circuit Court of United States for the 1st Circuit,) .....	4
Massachusetts Reports, .....	17
Mathews on Presumptive Evidence, .....	1
Maule and Selwyn's Reports, .....	6
Maxims in Law and Equity, .....	1
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M'Cord's Reports, (South-Carolina,) .....	4
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Miller on the Civil Law of England, .....	1
Miller's Inquiry, (on Statute and Criminal Law,) .....	1
Minor's Reports, see "Alabama Reports."	
Mitford's Chancery Pleadings, (by Jeremy,) .....	1
Mitford's Pleadings, .....	1
Modern Reports, .....	12
Molloy de Jure Maritimo, .....	2
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Montagu on Set-off, .....	1
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Murphey's Reports, (North-Carolina,) .....	3
Duplicate of 3d vol. ....	1

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Napoleon, Code of, see "Code Napoleon."	
Natural and Politic Law, see "Burlamaqui's Principles of Law."	
New-Hampshire Reports, .....	4
Newland's Chancery Practice, .....	2
New Reports, see "Bosanquet and Puller's Reports," 4th and 5th volumes.	
New-York Digest, .....	2
New-York Term Reports, see "Caines' Reports."	
Norris' Peake, .....	1
North-Carolina Law Repository, .....	3
Nott and M'Cord's Reports, (South-Carolina,) .....	2
Noy's Reports, (fol.) .....	1

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Ordonnance de Louis XIV. (4to.) .....	2
Overton's Reports, see "Tennessee Reports."	
Owen's Reports, (fol.) .....	1

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	<i>Vols.</i>
Paigo's Chancery Reports, (New-York,).....	2
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Paine and Duer's Practice,.....	2
Paley on Agency,.....	1
Palmer's Reports, (fol.).....	1
Parker's Reports, (fol.).....	1
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Peake's Nisi Prius Reports, (2d vol.).....	1
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Phillips' Evidence,.....	2
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Plowden's Reports,.....	2
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Popham's Reports, (fol.).....	1
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Pothier on Obligations,.....	2
Pothier Traite des Obligations, (12mo.).....	23
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"    on Mortgages,.....	3
"    on Powers,.....	1
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"    on Legacies,.....	1
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Reports of the Constitutional Court, (South-Carolina,).....	2
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	<i>Vols.</i>
Ridgeway's Parliamentary Cases,.....	3
Roberts on Frauds,.....	1
"    on Fraudulent Conveyances,.....	1
"    on Wills,.....	2
Robertson's Reports, (Scotch Appeal Cases,).....	1
Robinson's Admiralty Decisions,.....	6
Rolle's Abridgment, (fol.).....	2
"    Reports, (fol.).....	2
Roe's Reports, (Connecticut,).....	2
Roper's Law of Husband and Wife,.....	2
Roper on Legacies,.....	2
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Runnington on Ejectment,.....	1
Rushworth's Historical Collections, (fol.).....	6
Russell's Reports, (Chancery,).....	3
Duplicate, of 1st vol.....	1
Russell on Crimes,.....	2
Russell and Ryan's Crown Cases reserved,.....	1
Ryan and Moody's Reports,.....	1

## S.

Salkeld's Reports,.....	3
Sampson on Common Law,.....	1
Saunders on Pleading and Evidence,.....	2
"    Reports,.....	3
Savile's Reports, (fol.).....	1
Sayer's Reports, (fol.).....	1
Schoales and Lefroy's Reports, (Irish Chancery,).....	2
Secret Debates in Convention, on the Constitution of the U. States, see "State Papers."	
Selden's Fleta,.....	1
Select Cases, (New-York,).....	1
Select Cases in Chancery, (fol.).....	1
Sellon's Practice,.....	2
Selwyn's Nisi Prius, see "Wheaton's Selwyn."	
Sergeant's Constitutional Law,.....	1
Sergeant and Rawle's Reports, (Pennsylvania,).....	17
Sheppard's Touchstone,.....	2
Showers's Parliamentary Cases, (fol.).....	1
Shower's Reports,.....	2
Siderfin's Reports, (fol.).....	2
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Southard's Reports, (New-Jersey,).....	2
Spirit of Laws, (Montesquieu's,).....	2
Starkie's Criminal Pleadings,.....	1

	<i>Vols.</i>
Starkie's Evidence,.....	3
"    Reports,.....	2
Starkie on Slander,.....	1
State Trials,.....	23
Statutes at Large, see "Statute Law."	
Staunton's Penal Laws of China, (4to.).....	1
Stewart's Reports, (Vice-Admiralty,).....	1
Story's Pleadings,.....	1
Strange's Reports,.....	2
Stubbs' Crown Circuit Companion,.....	1
Style's Reports, (fol.).....	1
Sugden on Powers,.....	1
"    Vendors,.....	1
Supreme Court Rules, (New-York, Edition of 1818,).....	1
"    "    "    (    "    "    "    1830,).....	1
Supplement to Vesey Senior's Reports, see "Vesey Senior's Reports, Supplement to by Belt."	
Swanston's Reports, (Chancery,).....	3
Swift's Digest of the Laws of Connecticut,.....	2
Swinburne on Wills,.....	3
Sydney on Government, (fol.).....	1

## T.

Talbot's Cases, see "Cases Tempore Talbot."	
Tamlyn's Reports, (Chancery,).....	1
Taunton's Reports,.....	8
Taylor's Reports, (North-Carolina,).....	1
Tennessee Reports, (Overton's,).....	1
Term Reports, see "Durnford and East's Reports."	
The Cherokee Case, see "Cherokee Case."	
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United States Court Rules,.....	Vols. 1
"    "    Law Journal,.....	1

## V.

Van Der Linden's Institutes, see "Institutes of the Laws of Holland."

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Vaughan's Reports, (fol.).....	1
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Vernon and Scriven's Reports, (Irish Courts,).....	1
Vesey Junior's Reports, (Chancery,).....	20
"    "    "    Supplement, (by Hovenden,).....	2
"    "    and Beame's Reports, (Chancery, 3 vols. bound in 2,).....	2
Vesey Senior's Reports, (Chancery,).....	2
"    "    "    Supplement to, (by Belt,).....	1
Viner's Abridgment,.....	24
"    "    Supplement,.....	4
Virginia Cases, (1st vol. by Brockenbrough and Holmes, 2d vol. by Brockenbrough,).....	2
Virginia Reports, (Gilmer's,).....	1

## W.

Ward's Law of Nations,.....	2
Washington's Reports, (Virginia,).....	2
"    Circuit Court Reports, (3d Circuit of the United States,).....	4
Watson on Partnership,.....	1
Wendell's Reports, (New-York,).....	6
Wentworth's Pleadings,.....	10
"    "    and Index,.....	1
West's Reports, (Chancery,).....	1
Wharton's Digest of Pennsylvania Reports,.....	1
Wheaton on Captures,.....	1
Wheaton's Digest,.....	1
"    Reports,.....	1
"    Selwyn,.....	2
Wheeler's Criminal Cases,.....	3
Wightwick's Reports, (Exchequer,).....	1
Willcock on Municipal Corporations,.....	1
"    on the Laws of the Medical Profession,.....	1
Willes' Reports,.....	1
Wilson's Reports,.....	3
Winch's Reports, (fol.).....	1
Wood's Conveyancing,.....	6
Wooddeson's Lectures on the Laws of England,.....	3



Woodfall's Landlord and Tenant,.....	<i>Vols.</i> 1
"    Parliamentary Reports,.....	8
Woolrych's Commercial Law,.....	1
"    Law of Ways,.....	1

## Y.

Year Books, (fol.).....	10
Yeates' Reports, (Pennsylvania,).....	4
Yelverton's Reports,.....	1
Younge and Jervis' Reports, (Exchequer,).....	3

(A.)

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REPORTS OF THE COURTS OF THE UNITED STATES.

*Reports of the Supreme Court.*

	Vol.
Cranch's Reports,.....	9
Wheaton's Reports,.....	12
Peters' Reports,.....	5

*Reports of the Circuit Courts.*

Gallison's, (1st Circuit,).....	2
Mason's, { " " }.....	4
Paine's { 2d " }.....	1
Peters' { 3d " }.....	1
Washington's, { " " }.....	4

*Reports of the District Courts.*

Bee's Reports, (District of South-Carolina,).....	1
---	---

There are also several of the Decisions of the Supreme Court and of the Circuit Courts, of the United States, contained in Dallas' Reports. See "Reports of the State of Pennsylvania."

Wheaton's Digest,.....	1
Coxe's Digest,.....	1

REPORTS OF THE STATE COURTS.

*Reports of the Courts of Alabama.*

Alabama Reports, (by Minor,).....	1
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*Reports of the Courts of Connecticut.*

Root's Reports,.....	2
Kirby's ".....	1
Day's ".....	5
Connecticut ".....	7

*Reports of the Courts of Georgia.*

Charlton's Reports,.....	1
--------------------------	---

*Reports of the Courts of Kentucky.*

Littell's Selected Cases,.....	1
Hardin's Reports,.....	1
Bibb's ".....	4
Marshall's ".....	3
Littell's ".....	5
Monroe's ".....	1

*Reports of the Courts of Louisiana.*

	<i>Vols.</i>
Martin's Reports,.....	13
"    "    (New Series,).....	8
Christy's Digest,.....	1

*Reports of the Courts of Maine.*

Greenleaf's Reports,.....	5
---------------------------	---

*Reports of the Courts of Maryland.*

Harris and M'Henry's Reports,.....	4
Harris and Johnson's ".....	7
Harris and Gill's ".....	2
Gill and Johnson's ".....	1

*Reports of the Courts of Massachusetts.*

Massachusetts Reports,.....	17
Pickering's ".....	9
Bigelow's Digest,.....	1
"    "    Supplement to,.....	1

*Reports of the Courts of New-Hampshire.*

New-Hampshire Reports,.....	4
-----------------------------	---

*Reports of the Courts of New-Jersey.*

Coxe's Reports,.....	1
Pennington's ".....	2
Southard's ".....	2
Halstead's ".....	5

*Reports of the Courts of New-York.*

Coleman and Caines' Cases,.....	1
Johnson's Cases,.....	3
Caines' Cases in Error, (2 vols. in one,).....	1
"    Reports,.....	3
Johnson's ".....	20
Anthon's Reports, (Nisi Prius,).....	1
Johnson's Chancery Reports,.....	7
Cowen's Reports,.....	9
Hopkins' Reports, (Chancery,).....	1
Paige's "    (    "    ).....	2
Wendell's ".....	6
Johnson's Digest, (Old Edition,).....	1
"    "    (New Edition,).....	2
Cowen's ".....	1

*Reports of the Courts of North-Carolina.*

Haywood's Reports,.....	2
North-Carolina Law Repository,.....	3
Taylor's Reports,.....	1
Cameron and Norwood's Reports,.....	1

Murphey's Reports, .....	<i>Vols.</i> 3
Hawks' " .....	4

*Reports of the Courts of Ohio.*

Hammond's Reports, .....	3
--------------------------	---

*Reports of the Courts of Pennsylvania.*

Dallas' Reports, .....	4
Addison's " .....	1
Yeates' " .....	4
Binney's " .....	6
Browne's " .....	2
Sergeant and Rawle's Reports, .....	17
Rawle's Reports, .....	2
Wharton's Digest, .....	1

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Bay's Reports, .....	2
Desaussure's Reports, (Chancery,) .....	4
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M'Cords Reports, (Constitutional Court,) .....	4
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M'Cord's Chancery Reports, .....	2
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Overton's Reports, .....	2
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Washington's Reports, .....	2
Call's Reports, .....	3
Hening and Munford's Reports, .....	4
Munford's Reports, .....	6
Virginia Reports, (by Gilmer,) .....	1
Randolph's Reports, .....	5
Leigh's Reports, .....	1
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**No. 4.**

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**IN SENATE,**

**January 5, 1832.**

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**REPORT**

**Of the Adjutant-General, in obedience to two several resolutions of the Senate, of the 21st and 23d of April last.**

**STATE OF NEW-YORK.**

**ADJUTANT-GENERAL'S OFFICE, }  
January 5, 1832.**

**TO THE HONORABLE THE SENATE OF THE STATE OF NEW-YORK.**

In obedience to your resolution of the 21st of April last, directing the Adjutant-General to report, at the next session of the Legislature, upon a bill entitled "An act to reduce the parades and rendezvous of the militia, and to amend the provisions of chapter ten, part one of the Revised Statutes, so far as to conform them to this act;" and in obedience to your resolution of the 23d of the same month, referring to him a bill entitled "An act to amend the tenth chapter of the first part of the Revised Statutes, relating to the militia and the public defence," he has the honor to submit the following report:

In the examination of the bills thus submitted to him, he has endeavored to confine himself as strictly as possible to the specific provisions which they contain; but such is their connexion with the government of the militia, and the principles on which the system is founded, that he has considered it within the scope of the reference to present some general views of the whole subject; and he trusts that he will not be deemed to have exceeded the just limits of the duty assigned to him, if those views shall be found to illustrate the matters referred.

[S. No. 4.]

In adverting to the origin and uses of the militia of the United States as a military institution, it cannot fail to strike the observation that it is as peculiar in its character as the civil institutions, of which it is designed to be the protection and support. In most other countries it is a practical rule of government to limit as much as possible the influence of all, who live under it, over its measures and movements, and to arm and discipline such only as are in its pay and under its control. The spirit of our political organization, on the other hand, is, by extending as far as possible the right of suffrage, to subject the measures and operations of government to the influence of the greatest possible number, and, by arming and disciplining every citizen, to be prepared to sustain in all emergencies, by the united force of the whole community, a system instituted for the benefit of the whole. The theory of this part of the system is, that every citizen shall be armed, and that he shall be instructed also in the use of arms. The reasonings by which the utility of such a social organization is supported, are so unanswerable, that it is doubted by the most sagacious observers whether our civil liberties could be maintained for a length of time without the influence and protection of a militia. The same causes which would render such a force dangerous to the existence of an arbitrary government, render it indispensable to the existence of ours. That this was the opinion of the original parties to the constitution of the United States, is apparent from the second article of the amendments of that instrument, which assumes that "a well-regulated militia" is "necessary to the security of a free state," and declares that "the right of the people to keep and bear arms shall not be infringed;" showing that the militia was designed by those who had the largest share in its institution, not merely as a support to the public authority, but, in the last resort, as a protection to the people against the government itself. The militia system is to be regarded, therefore, not only as a part of the political constitution of the State, but as an eminently republican feature of that constitution, fitted equally with its civil features to maintain and give effect to the principles upon which it is founded. So intimately, indeed, are they all interwoven with each other, that the connexion which exists between them could not be dissolved without impairing the strength of the whole fabric.

The particular uses for which the militia is designed, are declared by the constitution of the United States to be "to execute the laws of the Union, suppress insurrections, and repel invasions."

The testimony of all history shows that the best regulated governments are liable to disturbances, which the civil arm alone is incompetent to quell. For the purpose of preserving the public order, therefore, a military force of some description is necessary. In most countries the civil authority is upheld by a regular force; and if the militia system were to be abolished, the army would necessarily be employed for this purpose by the federal government, and the States would have no agency in maintaining the supremacy of their own laws. But it is a striking illustration of the genius of our institutions, that, although we have at no period been without a standing army, the few insurrections which have interrupted our domestic tranquillity have been suppressed by the citizens themselves. Indeed, the nature of our political system and the spirit of the people are such that the employment of any other than a militia force on these occasions would inevitably have the effect of rendering every contest more protracted and sanguinary. A regular force in the permanent service of the central government is apt to be regarded, however unjustly, as an instrument of power without affinity with the mass of citizens; and, when employed against any portion of the people, it assumes from that very circumstance the aspect of oppression. But to a body of insurgents, the spectacle of a military force, depending upon the separate authority of the State, drawn from among themselves, and composed of those, who have participated in the very evils which they are seeking to redress, presents a moral example of forbearance, order, and submission to the laws, which must have a powerful influence in allaying the violence of their resolutions. With the established militia system, an overwhelming force may be embodied on the most sudden emergency in any quarter of the country; and it is one of the most salutary consequences of the employment of this species of force, that the military mass is dissolved as readily as it is created, without leaving a vestige behind it to commemorate the disgrace of the vanquished and perpetuate exasperation of feeling. If a portion of the regular army had been employed in suppressing the recent disturbance at Providence, it may justly be questioned whether the public order would have been so promptly re-established, or the laws so soon and so silently have resumed their sway.

But the most important relation, in which the militia can be considered, is that which it bears to the public defence. The modern practice in Europe of maintaining large standing armies for defensive purposes in time of peace, makes it necessary for countries conti-

guous to each other to be constantly equipped in the same armor, with which they are liable to be assailed. Such a state of martial preparation is highly unfavorable to national wealth, by withdrawing from the productive departments of industry a large number of laborers ; it is exceedingly expensive and burdensome to the community, from which the means of maintaining it are drawn ; and it is in principle unfriendly to popular liberty, by arraying on the side of the government large masses of armed men under its absolute control. Our geographical position happily dispenses in a great degree with this species of military preparation, and enables us to rest our public safety upon the people themselves, withdrawing none permanently from the ordinary pursuits of industry in peace, bringing in time of war the highest possible enthusiasm and spirit to the defence of our possessions, and through all vicissitudes ensuring to popular liberty its most certain protection. The policy of the United States is eminently pacific ; the genius of our institutions, the divisions of our industry, our habits, and the spirit of society are all averse to external acquisition ; our schemes of aggrandizement have a reference only to the development of our own resources upon our own soil, by force of the enterprise and industry of our own citizens. The militia system is peculiarly fitted to cherish this spirit of peace, and to eradicate every other inconsistent with it : it is calculated for defence only, and not for offence or conquest. Standing armies, on the other hand, are calculated for offence as well as protection ; and one of the evils of maintaining a large regular force is, that it invites to conquest by inspiring a consciousness of the ability to execute its purposes. It would seem to be unwise, therefore, whether we look to the most profitable employment of our resources, the security of our popular liberties, or the removal of all temptation to an unnecessary exertion of our strength, to allow the efficiency of the militia to be impaired by negligence or disuse, if by maintaining it all our purposes of defence may be answered. Our whole history proves that it is adequate to these purposes ; and if the authority of names were wanting to confirm the testimony of our experience, a higher in any respect than that of President Washington could not be cited. His familiarity with the qualifications and uses of the militia was exceeded by that of no other man ; he was made fully sensible of its deficiencies, also, during the long and eventful period of the revolution. Yet he did not hesitate to declare in his messages to Congress, long after the termination of that struggle, that " a free people ought not only to be armed, but disciplined ;" and that the militia might

"be trained to a degree of energy equal to every military exigency of the United States."

In enumerating the advantages of the militia as a system of public defence, its effect upon foreign nations ought not to be overlooked; presenting, as it does, a numerical force, which with the least expense is fitted to exercise the greatest restraint upon hostile enterprises against us. A vigorous tone of preparation for war is unquestionably the surest pledge of the duration of peace. A state of weakness invites aggression; and those countries are the most certain to be assailed, which are the least able to make resistance. To a country meditating hostilities against another, the spectacle of a whole people well armed, and so far disciplined as to be capable at a moment's warning of arraying at any point a force adequate to repel an invader, would present a much more formidable aspect than a regular force of limited numbers, however perfect its discipline. The opposition of a force of limited numbers may always be calculated; but where a whole people are armed and disciplined, the amount of the efficient population is the only measure of resistance. The truth of these observations may be better illustrated by a single example. If the whole number of days annually consumed for military purposes in the State of New-York were to be estimated in money, it would not amount to a sum which would meet the annual expense of paying, clothing, and subsisting a regular force of 2000 men. Yet how much more efficient as a principle of restraint upon the unfriendliness or cupidity of foreign nations would be our present well-organized militia force of near 200,000 men, capable of further augmentation by extending the enrolment, than a regular corps, however well disciplined, of 2000 men, scattered over our wide-spread territory, or even concentrated at the meditated point of invasion! The expenditure of time, therefore, necessary to discipline the militia, will ensure the preparation of a military body infinitely more efficient for all the purposes of national security, in consequence of its vast superiority of numbers, than an equal expenditure in money upon a regular force.

Thus, in all the essential properties of a safe, economical and extensive system of public defence, suited to our institutions and geographical position, the militia was justly regarded, by the framers of our constitution, as preferable to every other description of force. Any alteration, therefore, in the existing militia system, which should have the effect of rendering it inadequate to the declared ob-

jects of its institution, would involve a virtual abandonment of the principles, in which it had its origin ; and the expediency of the alterations proposed by the two bills under consideration will depend on their consistency with the accomplishment of those objects.

The bill first referred to is entitled, " An act to reduce the parades and rendezvous of the militia, and to amend the provisions of Chapter ten, Part one of the Revised Statutes, so far as to conform them to this act.

" Section I. The militia shall rendezvous as follows :

" 1. For inspection and martial exercise, by companies, in their respective beats, on the first Monday of June in every year, at ten o'clock in the forenoon.

" 2. At such other times and places, either by regiments, battalions, companies or troops, as the case may require, and as shall be directed in any order of the proper authority, calling into the service of the United States, or of this State, the whole or any part of the militia."

This section proposes to limit the exercises of the militia, excepting uniform corps, to one company parade, on the first Monday of June, in each year, at ten o'clock in the forenoon. Under the existing law, the same corps, in the interior of the State, are required to meet once, by companies, on the first Monday of September, at nine o'clock in the forenoon, for the purpose of training, disciplining and improving in martial exercise ; and once by regiments, or separate battalions, for inspection, review and martial exercise, between the first of September and the fifteenth of October. The proposed alteration is, therefore, to make the company parade on the first Monday of June, instead of September, at ten o'clock in the morning, instead of nine ; and to dispense altogether with the regimental or battalion parade.

If the last provision were to be adopted, there would be no objection to the proposed change in the time of holding the company parade, excepting the hour of the day, which is, perhaps, not very material ; but if the regimental or battalion parade be retained, the first Monday of September would be preferable, the troops, as a general rule, being better prepared for one in proportion as it approaches the other in point of time. The instruction received at the company training being recent and fresh on their minds, they enter upon their battalion exercises with more spirit, and better qualified to improve

by them. But the important question presented by this section is, whether the regimental or battalion parade shall be dispensed with.

The militia law of this State being subordinate, in some respects, to the constitution and laws of the United States, the question must necessarily be considered under two points of view: 1st. Whether the proposed alteration would be consistent with provisions of higher authority than those of the laws of this State; and, 2d. Whether, if not inconsistent with any such provisions, it would be advisable on the score of expediency.

1st. By the constitution of the United States, Art. 1 Sec. 8, par. 15, Congress has power "to provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States; reserving to the States, respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress." By the 17th par. of the same Article, Congress has power "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers," &c.

In pursuance of these provisions of the constitution, the law of Congress of May 8, 1792, (Bioren & Duané's Laws, U. S. vol. 2, p. 293,) requires that the militia shall be organized into divisions, brigades, regiments, &c.—prescribes the proper arms and equipments, and assigns to certain officers the discharge of such duties as are necessary to secure the execution of the law. The principal of these is the duty assigned to the brigade inspector, who is required to attend the regimental and battalion meetings of the militia, to inspect their arms, ammunition and accoutrements, &c.—and to make returns once in each year, to the Adjutant-General of the State, reporting the actual condition of the brigade, &c. From these returns of the brigade inspectors a general return is required to be made by the Adjutant-General to the Commander in Chief of the State and to the President of the United States.

It was undoubtedly considered necessary, by the framers of the law of 1792, that there should be some mode of determining whether the provisions of that law, relating to the organization and equipment of the militia, were complied with: and it is probable that this object was intended to be accomplished by requiring periodical inspections, and reports of such inspections. Although it would seem to be incident to the power of passing laws, to make such further provisions



as are necessary to secure their execution ; yet all doubt as to the existence of the right in this case, as with regard to all powers granted by the constitution of the United States, is removed by the 17th par. of Sec. 8, Art. 1, above referred to : and if the periodical inspections required are necessary to secure the organization or equipment of the militia, according to the law of 1792, the provision requiring those inspections would seem to be both "necessary and proper." That they are necessary to the organization of the militia may not seem clear ; but that they are necessary to secure the equipment of the militia can hardly be doubted. It is deemed indispensable, in all countries, where military forces are maintained, to secure the execution of the laws or ordinances regulating their equipment and discipline by means of periodical examinations, executed by competent officers. It is the only certain method of transmitting to the government the intelligence necessary to enable it to supply their deficiencies and rectify departures from the prescribed standard of discipline, &c. to which they are required to conform. The President of the United States is charged with the duty of taking "care that the laws be faithfully executed." It is his duty also "to give to the Congress information of the state of the Union," from time to time ; and of the state of the Union the condition of the public defence is a most essential part. The inspections and returns required by the law of 1792, to be performed and rendered, seem to be absolutely necessary to enable him to determine whether its provisions have been complied with, and to communicate to Congress all useful information, with regard to the organization and equipment of the militia, and the preparation of the country for the emergencies of war. It is, indeed, worthy of consideration in this case, whether a construction, which should deprive him of the means of knowing how far the provisions referred to had been complied with, would not be equivalent to a denial of his right to carry them into execution, by wholly defeating its exercise. The inspections required may justly be regarded as a part of the discipline of the militia, for which Congress has power to provide ; and being essential to the execution of that part of the law, which relates to its equipment, the law requiring them to be performed would seem not only proper but necessary, and therefore within the scope of the 17th par. of the Article of the constitution referred to. If this position be true, a State would neither have the right to dispense with those inspections, nor to provide for their performance in any other than the manner prescribed.

Although the law of 1792 does not in terms declare that there shall be regimental and battalion parades, it assigns to the brigade inspectors duties, to the performance of which such parades are indispensable. If those parades were to be dispensed with, the prescribed duties could not be performed. To dispense with them, therefore, would be a virtual nullification of the law, which prescribes them. It follows that, unless a State can lawfully declare that brigade inspectors shall not perform the duties prescribed by the law of 1792, it cannot pass a law containing provisions, with which the performance of those duties is incompatible; for this would be attaining by indirection that, which can not be directly attained.

2d. But in the absence of any legal impediment to the abolition of regimental or battalion parades, the arguments against it, as a measure of expediency, would appear to be decisive of the question. These meetings furnish the only occasions for bringing the several companies, of which regiments and battalions are composed, into contact with each other, and of exciting among them a salutary spirit of emulation in acquiring a knowledge of their duties. A comparison of attainments is always a stimulus to improvement; and to military corps it is peculiarly so. Their progress in discipline depends in a great degree upon the moral spirit, which animates them; and if there were no standard of comparison, by which their respective merits could be tested, no adequate incentive to exertion would exist. When different corps of different degrees of proficiency are made to act together, that which has attained the highest, becomes a standard of imitation for all the others. When they are made to act separately, those which have attained the greatest proficiency, decline, for want of the opportunity to exhibit it, and those which have made less progress, fail to improve, for want of a higher standard for imitation. Thus the effect of contact upon military corps, is to improve, and of separation to degrade, them. To the rank and file the effect of abolishing regimental and battalion parades would be highly pernicious; but to the spirit and efficiency of the officers there is reason to apprehend that it would be fatal. Field officers would be so in name only, because they would have no active commands. Without the habit of commanding or exercising regiments, they would soon become unable to command or exercise them. This would be more emphatically true as the field officers, who have been formed under the existing system, should retire, and new ones succeed them: and these changes might be expected to occur in rapid succession; for those who are worthy of commissions

would find no adequate motive to retain them, when deprived of the opportunity of making such proficiency in a knowledge of their duties as to render the tenure honorable to themselves. The company officers might be expected to decline as rapidly in character and qualifications, from the operation of the causes first referred to, if restricted to the observation of separate company exercises. A decline in discipline, instruction and military knowledge would inevitably follow this deterioration of the commissioned grades; for no military corps can be efficient without well-informed and capable officers. The officers' drill would not be calculated to supply the absence of regimental parades. It has its utility in familiarizing the officers with the branches of instruction, which they are to communicate to their men. But no officer becomes capable of commanding by merely being exercised as a soldier. The habit of command is as necessary to the officer as the habit of obedience to the rank and file: neither the one nor the other would be prepared for the duties respectively required of them, without the kind of discipline respectively suited to each.

But a still higher objection to the proposed change, is, that no two companies would be capable of acting together in any sudden emergency, without waiting to be practised in the necessary evolutions. The State of New-York, with a military force of near 200,000 men, would be without a regiment, excepting in the nominal organization exhibited upon the records of the Adjutant-General's office. This result would be the more to be regretted, as there are now in service many regiments, which perform all their appropriate exercises and evolutions with the spirit and precision of regular troops, and which might be led into the field upon the shortest notice, with the assurance of maintaining unimpaired the military reputation of their country.

A general languor in the performance of military duty might, therefore, be expected from the abolition of regimental and battalion parades, and a rapid decline in all that is calculated to qualify the militia to accomplish the objects for which it is maintained.

"Section II. It shall be the duty of all uniform companies and troops to rendezvous by companies in their respective beats, in addition to the inspection rendezvous on the first Monday of June, one day in each year, at such time and place as their respective commandants may direct; but such parade shall take place before the first day of October in each year; and the commanding officer shall

make a return of all absentees and delinquencies arising out of such other parade, in the same manner as is provided in the tenth section of this act."

This section makes no material change in the requisitions of the established law, excepting the last clause relating to absentees and delinquencies, and referring to section tenth. The examination of this clause is deferred until section tenth is considered, the same remarks being applicable to both.

"Section III. Every officer shall serve four years in the militia as an officer; and if a resignation is accepted before he has served four years, he shall be enrolled in the line of the militia, and be liable to do duty in the ranks, any provisions in the militia law to the contrary notwithstanding."

This section may be considered declaratory of the existing law, which intends that no officer shall be exempt from military duty, although his resignation be accepted by the competent authority, unless he has served four years as such. But as the practice in many parts of the State has been regulated by a different construction of the law, it would be advisable to retain this section for the purpose of putting an end to all doubt as to its intention.

There is one class of resignations, however, which it would seem but equitable to exempt from the operation of the rule—those tendered by officers who have been superseded by the election of juniors to command them. A resignation under such circumstances is considered due to the spirit of the military profession: it is only in extreme cases that an officer thus superseded would be justified by the opinion of his military associates in submitting to retain his rank as subordinate to one whom he had commanded. There would frequently be great hardship in compelling him to retain it; to compel him to serve in the ranks, would be a still greater hardship; and it is, therefore, submitted whether he should not be exempt, on the acceptance of his resignation, without regard to duration of service.

"Section IV. The commissioned officers of each regiment and separate battalion, and warrant officers not attached to companies, shall rendezvous within their respective beats, on the first Monday in September in each year, for inspection and martial exercise: the officer in command on that day shall be the inspector. The time and place shall be prescribed by the commanding officer of the regiment or separate battalion."

The existing law requires the officers and non-commissioned officers of each regiment and separate battalion in the interior of the State to rendezvous two successive days in each year, for exercise and discipline ; on the last of which, the brigade inspector is required to attend, for the purpose of instructing them in a knowledge of their duties. The section under examination proposes,

1. To substitute one parade for the two required ;
2. To make it an inspection for the persons present ;
3. To make the senior officer present the inspector ; and,
4. To dispense with the attendance of the non-commissioned officers of companies.

1. To substitute one parade for the two required.

The consideration which most naturally suggests itself in the examination of this provision, is that, so far as it relates to the commissioned officers, it proposes to dispense with duties which are voluntarily performed. They are incident to the tenure of a commission, which any individual to whom it is offered is at liberty to decline or accept. If they were absolutely useless, they might be dispensed with as an unnecessary burden. But so obvious is their utility, that it is believed the majority of those who bear the burden would rather be in favor of increasing than diminishing it. As they have not petitioned for relief from any portion of it, it is respectfully recommended that it be continued as it now exists.

There is perhaps no proposition, connected with the organization and discipline of military corps, better settled than the necessity of having a body of intelligent and well-trained officers. If they are without experience or instruction, it is impossible that those whom they command can make any progress in the knowledge of their duties. On the other hand, a body of untrained individuals may in a short time be brought to a high state of improvement in discipline, by competent officers. The reverses, which our regular forces experienced at the commencement of the late war, are in a great degree to be traced to the inexperience of the officers by whom they were commanded. They were generally as ignorant of their duties as the men whom they led : when their education should have been complete, the very rudiments were to be acquired. Unskilfulness, misdirection, disaster and defeat were the necessary consequence of these deficiencies. So obvious was the cause of the reverses which for a time embarrassed our military operations, that the organization of the regular army was radically changed soon after the termination

of the war, and its preparation for a future state of hostilities regulated by totally different principles. The system, the theory of which is to dispense with the greatest possible number of rank and file, to retain a large proportion of officers, and to cause them to be thoroughly instructed in all the branches of military science, has been put into operation ; and the government has under its control a corps of officers practised in all military exercises, embracing a larger amount of military science than any other body of equal number in any foreign service, and capable of preparing for action in a short period a large body of troops. The same arguments, which show the propriety of preparing such a corps of officers for the regular army, are equally applicable to the militia. In case of war, even if a numerous regular force is to be levied, the defence of the country is of necessity entrusted, at the commencement of hostilities, to volunteers or drafts from the militia. The enlistment of regular corps, and their transportation to the vulnerable points on the frontier, are the work of time ; and it is, therefore, necessary that the militia should be commanded by officers capable of training the corps entrusted to them to such a state of discipline as to be in a condition to take the field, on a sudden emergency, against an enemy.

The qualifications of officers being of a higher character, and more difficult to be acquired than those of the rank and file, it is indispensable that a greater number of drills should be required of them. The additional trainings now required by law, bear no more than a fair relation to the greater application and time necessary to make them acquainted with their duties. If it be requisite, then, as a provision against the exigencies of war, that they should be better practised in their particular duties than the rank and file, the proper change to be introduced, if any be necessary, would be to increase rather than diminish the number of their days of exercise and instruction. It is proper to observe, that these observations are not intended to apply to the city of New-York ; the exposed situation of the city, and other sources of danger, which will be considered hereafter, have rendered necessary a higher standard of requirements for the militia within the limits of the county—a standard fully equal perhaps to any necessity, however sudden or pressing.

2. To make it an inspection for the persons present ; and,
3. To make the senior officer the inspector.

It will be perceived that these propositions, so far as they relate to the inspection of the officers, are intended as a substitute, pro

tanto, for the annual regimental and battalion inspection now executed by the brigade inspector. The only object of such an inspection as the one proposed, would be to ascertain that the uniform and equipments of the officers conform to the established regulation. This duty might very well be executed by the senior officer present, should the propositions contained in this section be adopted: it could not be performed by the brigade inspector for more than one regiment in each brigade in the interior of the State, as the officers of each are to meet within the beats of their respective regiments on the same day. But it may be urged as a leading objection to this section, as well as to the first section of this bill, by which regimental parades are abandoned, that the attendance of the brigade inspector is dispensed with. This is the only officer in the performance of active duties in each brigade, who receives a regular compensation for his services. Though small, it is still sufficient in most cases to enable him to devote his time to the performance of his duties without any sacrifice. The post is one of considerable personal consequence, particularly in the interior of the State; and the incumbents are for this reason more permanent than those of the other offices in the militia. There are now in commission as brigade inspectors, several individuals who have held the post more than twenty years, and one who has held it nearly thirty. To the character of the brigade, the place is of much more consequence than to the individual. It is his duty to superintend the exercises of the officers at their second parade, to introduce the established system of discipline, and instruct them in their duties. His instructions constitute in many cases the most valuable part of their discipline; and they are much better qualified, after receiving them, to impart instruction to their men. If his attendance were to be dispensed with, he would himself, for want of practice, soon become inadequate to the discharge of his duties; the discipline and instruction of the officers would devolve, as provided for by this section, on the senior present, who is frequently now, and would in most cases if regimental parades were abolished, be incompetent to the task; and the officers would be subjected to a mere consumption of time, without any adequate benefit. Under such a plan of instruction, the militia system could hardly fail to go rapidly to decay.

4. To dispense with the attendance of non-commissioned officers of companies.

This provision is liable to the same objection, which applies to the provision relating to commissioned officers. Efficient and well-

trained non-commissioned officers are indispensable to the good government of a company, and its improvement in martial discipline. They are entitled to privileges which materially diminish their burdens; and after a limited period, they become exempt from military duty, except in case of invasion, &c. Upon the whole, the burden is not much heavier than that borne by the privates; and as their exercises, in conjunction with the commissioned officers, are not only essential to their improvement, but also personally advantageous to them by rendering them better qualified for the commissioned grades, to which they are frequently elected, it would be advisable to require their attendance as now provided for by law.

If the provisions of this section should be adopted, it would be important, in order to mitigate as far as possible their evil effects, to require the attendance of the brigade inspector at the drill of the officers proposed to be retained, with a view to superintend their exercises and inspect them. For this purpose, it would be necessary that so much of it as requires the officers of each regiment to parade on the same day, should be expunged, and the day left to be appointed, as it now is, by the brigadier-general.

“Section V: Every commandant of a regiment, battalion, company or troop, in addition to putting under guard as he is hereby authorised to do, and the exercise of the usual military powers with which he is hereby vested, shall impose all fines on the persons belonging to the regiment, battalion, company or troop, who shall have discharged any fire-arms on such day within two miles of such parade; also on those who shall on such day refuse or neglect to obey the orders of a superior officer, or to perform such military duty as may be required, or depart from his colors, post or guard, or leave the ranks without the permission of a superior officer.”

The provisions of this section, so far as they give the power of imposing fines, will be considered with the provisions of sections ninth, tenth, &c.

There is one provision, however, which it is proper to consider here. It will be observed that commandants of regiments, battalions, companies and troops, are authorised by this section to impose fines for certain offences, during the day of parade required by section fourth, on all persons belonging to the regiment, battalion, company or troop. This is a regimental or battalion parade of the commissioned officers and warrant officers not attached to companies.



The only persons belonging to a company required to be present, are the captain, lieutenant and ensign. The effect of this provision, as relates to the commandant of a company, is to confer on the captain the power of imposing a fine in the cases specified on the lieutenant and ensign. But as the company is a part of the regiment or battalion, the commandant of the regiment or battalion, to which it belongs, is authorised to impose a fine in the same manner on the captain, lieutenant and ensign, as they are all "persons belonging to the regiment or battalion." He has a separate power, therefore, to fine the captain, lieutenant or ensign, and a concurrent power with the captain to fine the lieutenant and ensign. If the power of imposing fines be given in these cases as proposed, it would be proper to limit its exercise to the officer in command on that day. Such a limitation is necessary to make it consistent with the nature of this parade, which is for general instruction. The officers of the regiment or battalion go there as individuals, for their common improvement; and company officers not being exercised separately, but in conjunction with all the other officers of the regiment or battalion present, captains have in fact no commands. This section, therefore, proposes to confer on them a barren power, or one which, if capable of being exercised, would be a power over those, who, for the time being, do not owe them a distinct obedience.

"Section VI. The officer commanding the company or troop, shall keep a roll of all persons liable to perform military service, belonging to his company; which roll shall contain the names of those who are liable to be called out for inspection and martial exercise, and of those who are conditionally exempt by law from such service."

The only class of conditional exempts, or of persons exempt from military duty on the performance of conditions, is composed of those who from scruples of conscience are averse to bearing arms, and are released from military duty on condition of paying annually a commutation of four dollars. There is another class of persons, who, without performing conditions, are for the time being absolutely exempt from military duty; as sheriffs, clerks of counties, and other public officers. Here the exemption is incident to the tenure of the office, and may therefore be considered temporary. It is conceived that this class of exempts should also be included in the company roll, so that the attention of the captains of companies might be annually directed to them. It would also be an improvement of the provisions of this section, to provide that the cause of exemption

should be stated in all cases, and borne on the roll with the names of the exempts.

"Section VII. The commandants of the several companies shall inspect their several companies and troops on the first Monday in June in each year, and make inspection returns thereof to the commanding officer of the regiment or separate battalion, on or before the first day of September in each year; to which returns, the number of conditional exempts residing within the company beat shall be added. The commanding officers of the several regiments and separate battalions shall make inspection returns of their regiments or separate battalions to the brigadier-general and to the brigade inspector, on or before the first day of November in each year; and the brigade inspector shall make an inspection return of the brigade to the major-general of division and to the adjutant-general, on or before the first day of December in each year."

The inspections required by this section to be made by captains of companies are intended as a substitute for the established system of inspection by the brigade inspectors, and are a necessary consequence of the abolition of regimental and battalion parades. To the considerations already presented, with a view to show the pernicious tendency of that measure, as relates to the practical exercises of the militia, may be added the pernicious tendency of the proposed substitute, as relates to its equipment. With a lax system of inspections it could not be expected that the laws regulating arms and equipments would be observed: thorough examinations, regular reports of delinquencies, and a rigorous exaction of the legal penalties, are essential to the proper execution of those laws. All these ends are secured, as far as practicable, under the existing law, by the examinations annually performed by the brigade inspector. Captains of companies, knowing that their commands are to pass this ordeal, and that the discredit of a general deficiency will affect their character as officers, have a motive to carry into effect, as far as depends on them, the requirements of the law. At the parade of the company previous to the general inspection, their attention is directed to the state of its arms and equipments, and deficiencies are often supplied before that inspection occurs. If the captains of companies were to be made the inspectors, no such motive would exist. There would be no supervisory power to secure a faithful, or detect a negligent, discharge of their duties. Deriving their commissions from the suffrages of their companies, there would be too much reason to appre-

And, in many cases, that the commander would not be disposed to enforce the law against those to whom he owed his elevation, and that the subordinates would be disposed, in many cases, to place over themselves individuals, on whose indulgence they might rely to screen them from the penalties of disobedience. In regular armies commanding officers of corps, responsible for their condition, are never entrusted solely with the inspection of their commands. The principal business of inspection is confided to officers wholly disinterested, who may be relied on for a punctual and impartial discharge of the duty. To devolve the duty on the responsible person is to make him responsible to himself alone, or, in other words, wholly irresponsible. Laxity in enforcing the law against offenders would very naturally be accompanied by a corresponding laxity in making the returns of inspections. The return of a company deficient in its arms, equipments, &c. would be a record of the delinquency of the captain, who is the responsible officer; and yet, by the provisions of this section, it would depend on him whether the return be made or not. None of the annual returns, required by law to be made to the Adjutant-General's office, are, taken collectively, either correct in themselves, or made at the prescribed periods, excepting the returns of the brigade inspectors, who are paid for making them. It has been found nearly impossible to procure an annual roster of all the officers of each brigade, above the rank of captain, to enable the Adjutant-General to prepare annually the roster, required by law to be kept in his office: and the present incumbent has adopted the rule of correcting his roster by the election returns, whenever a vacancy is filled and a commission issued. If such is the difficulty of procuring eighty-two simple returns, the difficulty of procuring two thousand nine hundred and thirty-four returns of inspections, which are far more complicated, and which must, in many cases, show upon their face the delinquency of the persons who are required to make them, may readily be conceived. Two thousand four hundred and eighty-eight captains would be required to make returns of their companies, three hundred and forty-five colonels of their regiments, nineteen majors of their separate battalions, and eighty-two inspectors of the brigades to which they belong; and all without compensation for their services. It is not too much to say that the provisions of the law would not be complied with. Both the State and the General Government would consequently be but imperfectly informed as to the condition of our military force, and therefore incapable of measuring our capacity for resisting external violence,

or maintaining internal tranquillity. That the arms and equipments of the militia would regularly become more deficient seems equally clear. Some corps would doubtless be kept up with regularity and spirit, but it would be through the labors and devotion of individuals, and not by force of law. Such a dependence is, from its nature, exceedingly uncertain, both in duration and degree, and, therefore, unfit to be relied on as the basis of a system, whether of civil order or public defence.

The only modes of enforcing the requirements of this section, would be to allow to each officer a compensation for his services, in inspecting and making a return of his command, or to annex a heavy penalty to the non-performance of the service. The first would require a large disbursement of public money, and the second, however effectual in most cases, would sometimes fail, from the great number of persons of whom the service is required. The present mode is more simple; and, by providing an adequate compensation, and putting in requisition the services of a much smaller number of individuals, rarely fails to accomplish the object proposed.

**"Section VIII. The brigade inspector shall be entitled to receive, for his services under this act, the sum of \_\_\_\_\_ dollars,"**

If the provisions of section seventh should be adopted, the brigade inspector should be allowed no compensation for his services, unless the commanding officers of companies, separate battalions and regiments are also compensated for theirs. The sole duty of a brigade inspector, under the provisions of that section, would be to make a return of the brigade, consisting of from two to seven regiments; in other words, to consolidate from two to seven returns. It is also made the duty of each commanding officer of a regiment, or separate battalion, to make a return to the brigade inspector. Regiments and separate battalions contain from four to twelve companies; and the duty of each commanding officer of a regiment, or separate battalion, would be to consolidate from four to twelve returns. He should, therefore, receive at least as much as the brigade inspector. But it would be the duty of commanding officers of companies, not only to make returns of their companies, but to inspect them also. This is a more troublesome and laborious duty, and those who perform it should receive a higher compensation. Brigade inspectors should, therefore, receive nothing, if the provisions of section seventh should be adopted; or, if a compensation should be allowed them,

commanding officers of regiments, separate battalions and companies, should, upon the same principle, be compensated in proportion to the services rendered by them.

"Section IX. The commanding officer of the company or troop, shall, on the first Monday of June in each year, impose the fine, according to law, on the absentees and on the delinquents, for delinquencies and deficiencies; and before the dismissal of the company, it shall be his duty to read to them the names of the persons, on whom fines have been imposed, together with the amount imposed on each.

"Section X. Every commandant of a regiment, separate battalion, company or troop, shall, within six days after imposing the fine, make a return of the names of the persons fined, together with the amount imposed on each, certified upon honor, to one of the justices of the peace of the town, in which the delinquent resides; which return shall be sufficient evidence to authorize the issuing the warrant, as is hereinafter provided.

"Section XI. The justice, to whom such return shall be made, shall forthwith issue a summons, directed to any constable of the town, requiring him to summon such absentee or delinquent to appear forthwith before such justice, at some place to be specified in the summons, to show cause why the fine imposed should not be collected; which summons shall be served personally, or by leaving a copy at his personal abode.

"Section XII. If upon the return of such summons, no sufficient cause shall be shown to the contrary, the justice shall forthwith issue a warrant, under his hand and seal, directed to any constable of the town, where such delinquent or absentee shall reside, commanding him to levy such fine, with the costs of the proceedings, of the goods and chattels of such delinquent; and in case such delinquent shall be under age, then to levy the same of the goods and chattels of the father, mother, master or mistress of such delinquent. The warrant may be renewed from time to time by the justice, but no person shall be imprisoned on such warrant.

"Section XIII. The constable, to whom such warrant shall be directed, shall forthwith collect the moneys therein mentioned; he shall pay the same, deducting his own fees, when collected, to the justice of the peace, who issued the warrant, who is hereby required,

on or before the thirty-first day of December in each year, to pay over the fine to the commissioners of common schools of the town or city, in which the delinquent resides; and the same shall be distributed by said commissioners as other school moneys are distributed in said town or city. Justices and constables refusing to account for moneys received and neglecting to pay over the same as is herein directed, shall be liable to an action therefor in the name of the said commissioners: the bail of the constable shall be liable as in other cases.

“Section XIV. Every person imposing a fine under the provisions of this act, shall within ten days thereafter furnish to the clerk of the town or city in which the delinquent resides, a certified copy of the return required to be made to the justice, which shall be kept on file in the office of said clerk.

“Section XVII. Courts martial, except in cases not provided for this act, are abolished.

“Section XIX. The decision of the justice in all cases arising under this act, shall be final and conclusive.”

The preceding sections, together with the fifth, which has been given at large in its numerical order, provide for a total abolition of the established system of imposing and collecting fines and the adoption of a substitute.

It is to be observed that the established system of penalties to secure the execution of the militia law is designed exclusively for a state of peace. In a state of war, the militia, when called into actual service, becomes subject to the martial code, which proceeds upon the principle of enforcing obedience by imprisonment and other personal inflictions. These punishments are awarded to purely military offences, and not to deficiencies in arms and equipments, which are in war provided by the public. But in time of peace there is an additional class of delinquencies growing out of the legal obligation of those, who are subject to military duty, to arm and equip themselves; and to these deficiencies a distinct class of penalties is annexed. Purely military offences, such as disobedience of orders, insubordination, &c. may be punished by commanding officers on days of martial exercise, as in time of war, by putting the offender under guard; but, as the punishment is limited in this case by the duration of the authority of the officer, which expires with

"the setting of the sun," the law provides also that the offender may be returned to a court martial to be punished by a pecuniary mulct. For the other class of delinquencies referred to, such as a deficiency in the arms and equipments required by law, or non-attendance at the established parades, a double remedy is not provided: they can only be reached under the existing law by fines imposed by courts martial and levied upon the property of the delinquent. These delinquencies, as well as the penalties with which they are visited, partake more highly of a civil than a military character: and no reason founded in principle is perceived why the final application of the penalties may not be made by a civil magistrate. If a private appears upon parade without a musket, the law immediately subjects him to a penalty of one dollar. The only question is whether the penalty has been incurred; and this is a mere matter of evidence, which a civil magistrate may investigate and decide without any knowledge of the principles or usages of military service. It is only to be considered, therefore, whether, in reference to this class of delinquencies, the proposed change may be adopted consistently with a proper regard to the interest of the public and the convenience of individuals.

The first objection, which suggests itself, is the additional burden it would impose on individuals. Under the existing law a court martial is organized for the trial of this class of delinquencies as well as all others, and the members being paid for their services by an appropriation of a portion of the fines imposed and collected under their authority, the law allows no costs of process. Under the proposed system, the costs of proceeding would be added to the penalty, and adjudged against the delinquent. Thus in the case of a deficiency in the articles of a bayonet and belt, the delinquent would incur a penalty of twenty-five cents, which under the existing law he might pay into court at the trial without incurring any costs. But under the proposed system he would not only incur this penalty, but would be compelled also to pay the justice his fees, besides the fees of the constable, who served the summons. The average amount of these costs would not fall short of seventy-five cents; so that a delinquent who should forfeit twenty-five cents would be compelled to pay costs to three times the amount of the penalty, and four times as much under the proposed as he would under the existing system. And, if he were to contest the justice of the imposition, go into an investigation of facts and fail in his justification, he would subject himself to a much heavier burden of costs.

The second objection is, that it would impose a heavy burden of expense on the public. It is presumed that the return required by section tenth to be made to a justice of the peace is in the nature of an information, upon which proceedings are instituted in behalf of the people with a view to the recovery of the penalty incurred. If the delinquent appears and shows cause why the fine imposed should not be collected, as he may under section twelfth, he would become entitled to a discharge, without costs, from all further liability, and the justice and constable would have a claim for their fees upon the state. The sufficiency of the excuse could not appear without an examination of witnesses under oath, and the justice would be entitled to additional fees for this examination. Upon the lowest calculation, fees to the amount of one dollar would accrue upon almost every case, in which a delinquent should be excused from the payment of the fine. The number of regiments and separate battalions in service are three hundred and sixty-four; and the average number of delinquents in each annually about sixty. Of these about one-half, say one-third, are excused, for non-appearance at parades by the court martial, before which they are arraigned for trial, on account of sickness in their families, absence on business of a pressing nature, &c. or for deficiencies in arms, &c. on showing sufficient cause. The number of persons excused from payment of the fines imposed on them would not fall short of seven thousand two hundred and eighty; and the costs annually accumulated against the State would not be less than \$7,000.

If the nature of this prosecution has been mistaken in the foregoing remarks; if, instead of a public prosecution, it is to be an action brought in the name of the officer imposing the fine, making him a party to it, and liable for costs in all cases where the delinquent is excused, the returns of delinquents would rarely be made. No individual could be expected to subject himself to a certain loss, in many cases, when he could not by possibility be a gainer in any. If this be the intention of the law, it would be necessary in order to secure its execution, to make provision for the payment of these costs by the State; and this would revive the objection already glanced at, and predicated of the supposition that it is intended to be a prosecution in behalf of the people.

Thus, although there be no objection in principle to the imposition of fines for mere delinquencies by the joint authority of the commander and a civil magistrate, the practical inconveniences would



be far superior to those of the existing mode, both as relates to the public and individuals.

But offences of a purely military character involve other considerations ; and to bring them in any manner under the jurisdiction of a civil magistrate, would not only be objectionable in principle, but would be fraught with objections altogether fatal on the score of justice and policy. The inconveniences above mentioned in case of deficiencies would attend upon this class of cases also, the proposed mode of imposing and collecting fines being the same in both. But the leading objection is in giving to the civil magistrate jurisdiction of subjects, which, to be disposed of in such a manner as to do justice to individuals and maintain military subordination, should be adjudicated by persons familiar with military principles and usage. These, not being a part of the study of civil magistrates, and of a nature not to be properly understood without some study or experience, would be liable to interpretations so lax, and so various from the great number of interpreters, as to be subversive of all discipline in the performance of military duty, and of all uniformity in the punishment of disobedience. The operation of the proposed system will be better understood by assuming a case of delinquency, and carrying it through its several stages under the established system and the substitute. Let it be supposed that a private under arms leaves his post without permission, accompanying the act with language disrespectful to his captain. Under the existing law, his name would be returned by the captain to the regimental court martial, which consists of three officers of the regiment, appointed by the colonel, not with a view to this particular case, but for the trial of all delinquencies within the year. It is difficult to fancy a tribunal more impartially constituted, or more likely to decide the case upon its merits. Even if one of the members should chance to be prejudiced against the offender, a majority might safely be calculated on as impartial judges. They would be able also, from their military experience, to put a proper estimate on the offence in the case submitted, and to impose a fine corresponding in amount, as nearly as possible, under the discretion given them by the law, with the degree of criminality. In a word, they would combine with a consideration of the intention with which the offence was committed, a consideration of its relation to the principles and rules of obedience. As in the punishment of crimes in civil society, those which are most difficult of detection are sometimes visited, from that very circumstance, with higher penalties than others of greater turpitude ; so in military

service, offences having a direct tendency to subvert discipline; and destroy that subordination which can alone render corps equal to the objects for which they are maintained, are considered more grave than others of greater criminality, when viewed independently of that relation. Officers are more likely than civil magistrates to give their due weight to these considerations; they are quite as likely to administer impartial justice; and owing their places to the suffrages of their subordinates, they would certainly not be less likely to listen to the suggestions of humanity in their behalf.

If the proposed system were to be adopted, the captain, in the case under consideration, would impose the fine on the offender; and in the very first step of the proceeding it is liable to this serious objection, that he is, from the nature of the case, the individual to whom of all others the power should not be entrusted. The disrespectful language is addressed to him; he is the object of personal insult; his authority is openly resisted and brought into contempt in the face of his company. It is inconsistent both with reason and experience to expect that his equanimity of temper would always be proof against this provocation; and the fine would sometimes be imposed under feelings of irritation not the most favorable to an impartial administration of justice. In the militia the officer and soldier are neighbors, generally equally respectable, and on terms of familiar intercourse, particularly in the interior of the State. Personalities are, therefore, calculated to excite stronger animosities from the near approach of the parties to the condition of equality. As a general rule, the amount of the imposition might be expected to reach the utmost limit of the discretion imparted to the officer by the law.

The fine being imposed, the return is rendered to the justice, who issues his summons, and the offender appears before him. Here the same investigation takes place as in the case of a court martial; but there is this essential difference in the result: the decision is pronounced in one case by a single magistrate, unacquainted in most instances with military law or usage, and therefore unfit to determine as to the propriety of the imposition: he is without any authority to mitigate the penalty, if it appears to be excessive, but must either confirm or remit it "in toto;" and he is merely called to exercise a revisory or secondary jurisdiction over cases already adjudicated. In the other, the decision is pronounced by three judges, familiar with military usages, acting upon an original case,

with every motive to adapt the penalty to the offence. The bias of the justice would probably, as a general rule, be in favor of sustaining the penalty, upon the ground of his confidence in the individual imposing it, and his own want of familiarity with the practice and laws of military obedience. There would be great danger that the operation of this system upon military offenders might become exceedingly oppressive, by conferring the sole power of imposing fines on the individual most likely in many instances to exercise it rigorously, and confiding the final adjudication of all cases to a class of persons not always the best qualified, from the nature of their pursuits, to pronounce an enlightened judgment upon them. When these effects of the proposed system are viewed, in connexion with the liability of offenders to the costs of process and trial, their condition would obviously not be improved by the change.

But a still more serious objection to the proposed substitute, is that the decision of the justice is final and conclusive. If there is any class of cases, which seems entitled to a hearing on an appeal to a higher tribunal, it is this. The change in all its parts is highly unfavorable to those most affected by it, when compared with the present system ; but in none more so than in taking away the right of appeal. By the present law, if a fine is imposed by a court martial upon a delinquent, he has a right of appeal to the officer instituting the court ; and if his appeal is dismissed, he has a further right of appeal to the commander in chief. If a court, forgetful of its obligations, or misjudging the facts of a case, should not do justice to a party arraigned before it, an appeal to the officer instituting the court rarely fails to procure a redress of the grievance ; yet if the application should fail, justice will always be done by an appeal to the highest military authority of the State. But so little cause is there of complaint with the sentences of regimental and battalion courts martial, and the decisions of officers instituting them, that not more than twelve or fourteen appeals from them are annually addressed to the commander in chief, although fines are annually imposed by more than three hundred of these courts.

Whatever may be the decision of the Legislature on the plan proposed, it would be necessary to except the city of New-York from its operation. From the compactness of the population of the city, regimental and battalion courts for the trial of delinquents are dispensed with, and brigade courts instituted. This mode of imposing and collecting fines promotes despatch, and answers every purpose.

But if a justice of the peace were to be entrusted as proposed with the power of pronouncing upon the imposition of fines by commanding officers of regiments, battalions, companies and troops, and with the business of collecting, receiving and paying them over, it would be difficult, if not impossible, to carry the law into execution without creating new civil officers for the purpose. The district of one justice of the peace comprehends three wards, comprising within it the beats of three entire regiments and parts of two others. The names of several thousand delinquents would be annually returned to him; and it is believed that no habits of industry or talent for business would be adequate to a proper investigation of so large a number of cases, in addition to the ordinary business of his office.

If, notwithstanding the objections above stated, it be thought advisable to abolish regimental and battalion courts martial, and to substitute some other mode of imposing and collecting fines, it is respectfully proposed for the consideration of the Legislature, that, instead of employing a justice of the peace as provided for by this bill, the judge advocate of each brigade should be vested with the powers of a magistrate for this purpose; that it should be made his duty to impose all fines, as they are now imposed by regimental and battalion courts martial; that an appeal should lie from his decision to the commanding officer of the brigade, and to the commander in chief; that he should, for the greater convenience of the different corps composing the brigade, summon the delinquents of each regiment or battalion to appear before him at some central point within the bounds of the regiment or battalion to which they belong, where it should be his duty to attend at the appointed time, conduct the examination of witnesses, hear excuses, and decide upon all military offences and delinquencies affecting non-commissioned officers, musicians and privates. It should be his duty to keep a register of all examinations, so that he should be able to make the necessary return in case of an appeal from his decision; and he should be allowed out of the fines collected, a compensation of six dollars per day for his services, the same amount as is allowed to brigade inspectors—a sum, which would not be more than an equivalent for his time, trouble, and expenses of travelling.

The advantages of this mode over the one for which it is proposed as a substitute, are, first, that the judge advocate being a military man, would be better qualified than a civil magistrate to give due weight to those considerations, which are calculated to mitigate or

aggravate violations of military law and usage ; second, that he would be a more careful and impartial judge, as his jurisdiction would be original, and not revisory like that of the justice as proposed by the bill under consideration, so that the whole responsibility of erroneous or oppressive decisions would be thrown upon him ; third, that the right of appeal to the commanding officer of the brigade, and, in the last resort, to the commander in chief, would present an effectual guard against the abuse of his authority ; and, fourth, that it would be more economical, as the examination of twenty or thirty cases of delinquency, which might be accomplished in a day, would be conducted for six dollars, whereas the fees of a justice in the same cases would amount to at least double that sum.

To secure the appointment of proper persons to this responsible trust, the power might be vested in the Governor and Senate. A vote of two-thirds of the members of the Legislature would, in that case, be necessary, under article four, section five of the constitution of the State, in order to change the existing mode of appointment.

It is well understood that one of the principal causes of the prevailing dissatisfaction with the militia system in this State, is an impression that military fines are frequently applied to unauthorised objects, although it is believed that no well authenticated instance of such a misapplication has come before the public. But the public is aware that large sums are annually derived from that source, and it has no means of knowing how they are appropriated. This circumstance alone is calculated to give color to suspicions and imputations unjust to those, who are charged with their application to the objects specified by law ; and it seems to be due to them, as well as the public, that the information necessary to show that the requirements of the law are fulfilled, should be collected where it can be reached by the Legislature. As a principle it is right, that, whenever considerable sums are drawn from the community to be applied to public objects, a strict accountability should be provided for.

For these reasons, it is proposed as an amendment of the existing mode of collecting and applying military fines, first, that they shall be collected on the warrant of the officer ordering the court, or his successor in command, to whom the return shall be made by the person executing the warrant : second, that the moneys arising from fines shall be paid by the person collecting them to the paymaster of the regiment or battalion, to which the individuals of whom they

are collected, belong; and that the collector shall produce to the officer who issued the warrant for their collection, the receipt of the paymaster for all such moneys, at the time of making his return to the warrant: third, that the paymaster shall pay, for the use of the regiment or battalion, all moneys received by him, under the existing restrictions as to the objects of expenditure, and upon the orders of the officers designated by the present law to direct their application: fourth, that the paymaster shall take duplicate receipts for all moneys thus expended, one of which shall be transmitted by him with an annual account of receipts and expenditures to the adjutant general's office, a copy of which account shall be furnished to the officer instituting the court, or his successor in command: fifth, that the paymaster shall retain, out of the moneys received by him, a certain per-centage to be fixed by the Legislature, as a compensation for his services: sixth, that he shall pay over to the comptroller annually all balances remaining unexpended in his hands; to secure which, a list of all balances liable to such payment shall be furnished to the comptroller from the adjutant-general's office: seventh, if the paymaster shall make default in paying over such balances, or in making his annual return, he shall be reported for prosecution to the district attorney of the county in which he resides: eighth, the paymaster shall give a bond, with two sufficient sureties, to be approved of by the field-officers of the regiment, in a certain sum to be fixed by the Legislature, conditioned for the faithful performance of his duties: ninth, his resignation shall be accepted by the commander in chief, with the approbation of the commanding officer of the regiment or battalion to which he belongs.

The advantages to be secured by the proposed alteration, will be as follows: First, the moneys collected will be paid into the hands of a responsible person, which is not always the case when paid, as they now are, to the president of the court martial. Second, the warrant being issued by the commanding officer of the regiment, and the return made to him, with the receipt of the paymaster, he has the means of knowing the amount collected; and in this manner he is enabled to ascertain whether the constable who collects the money, and the paymaster to whom it is paid, are faithful to their respective trusts. This object is not perfectly secured by the present law. The president of the court issues the warrant, receives the return of the constable, and takes the moneys collected; and the commanding officer of the regiment has in his possession no means of knowing how far the list of fines imposed corresponds with the list of fines

collected. The fidelity of the president of the court, who is the receiver under the present law, is principally secured by his character; whereas, under the proposed amendment, the fidelity of the paymaster would be ensured by a pecuniary liability, which is the most proper security for the execution of pecuniary trusts. Third, the annual account to be rendered by the paymaster to the adjutant-general's office, is not only a check upon him, but by exhibiting in detail the items of expenditure, is a check upon the officers, under whose direction the moneys are expended, against a misapplication of them to illegal objects. The copy of the return furnished to the officer instituting the court, will show whether the moneys have been expended by the paymaster in pursuance of the orders of the officers authorised to direct their application, and enable him to give notice to the proper authority of any misapplication of those moneys by the paymaster. Fourth, the last and the most important object attained, is in placing in the hands of the government a faithful account of all receipts and expenditures in this branch of military service. The accounts rendered will be within the reach of the Legislature; and an abstract can at any time be presented, on a resolution to that effect, for the public information. Thus a proper accountability will be secured from those who collect fines, and apply them to the uses of the military establishment: the existence of such a system of accountability will furnish a conclusive reply to any charge of misapplication against the responsible persons; and the public may always know the amount, and, if required, the specific objects of expenditure.

The examination of the accounts of the paymasters, more than three hundred in number, with their vouchers, will impose a very heavy additional burden of duty on the adjutant-general. This consideration, however, would not, in his opinion, justify him in declining to recommend a change, which he considers due both to the military establishment and the public.

The proposed application of military fines by the provisions of section thirteenth, for the benefit of common schools, is liable to the objection that it would deprive the military establishment of the only fund, by which the necessary expenses of keeping up its details can be defrayed, without imposing a tax upon the State, or an additional tax upon the officers. The publication of notices for elections and parades, the communication of orders, the purchase of stationary, the hire of rooms in the city for officers' drills, and of fields in the

country for regimental and battalion parades, lead to disbursements which, in the absence of that fund, would, without some legislative provision for them, fall upon the officers. The purchase and repair of colors and musical instruments, and the hire of musicians, constitute large items of expenditure: all these are necessary to keep up the appearance and spirit of military corps, and they are, under the existing law, defrayed by the fund arising from military fines. If this burden were to be imposed on the officers, in addition to the expense of equipping themselves, and performing far more onerous duties than the rank and file, it is to be apprehended that the inducement to accept commissions would fall so far short of the burden of supporting the rank which they give, as to render it difficult to procure a sufficient number of candidates to fill vacancies. In Massachusetts, each regiment and battalion is furnished with colors, and each company with instruments of music, at the expense of the State: the adjutant-general is also required to provide at the public expense, blank orders or notifications for attendance at inspections, trainings, reviews, and elections of officers. All these expenses are paid in this State, under the existing law, by the military establishment itself, without devolving any burden on the public.

Should this application of military fines be sanctioned by the Legislature, there is every reason to believe that it would break down the whole spirit of the military establishment, unless the State should assume the burden of these necessary expenditures. If the proposition contained in section thirteenth were, whether these expenses should be assumed by the State, a very different question would be presented; but the proposition is, whether a fund arising from sources wholly military shall be diverted from its accustomed application to military objects; whether the establishment shall be left without any provision for maintaining that pride of appearance, which is one of the highest elements of improvement, and indeed without any means of keeping up its necessary details.

The provision contained in section twelfth, is an exemption of all persons from imprisonment for penalties incurred by reason of any deficiency, delinquency, or offence whatsoever. To a certain extent this provision seems proper; but beyond that point, it would tend to the utter subversion of military order and discipline. Where a deficiency in arms and equipments exists, and a fine is imposed, it would be agreeable to the provisions of the act passed at the last session of the Legislature for the abolition of imprisonment for debt,



to limit the liability to the property of the delinquent. If he has no property, and is therefore unable through poverty to provide himself with arms and equipments, it would not only be unjust but barbarous to imprison him. Courts martial have the power of remitting the penalty in such cases, and it is always exercised where satisfactory evidence of inability to pay it is shown. Still it would be well to rest the exemption from imprisonment, in every such case, upon the more certain and durable basis of law. But to extend the exemption to offences, or to any other class of delinquencies, would have a highly prejudicial effect upon military subordination and obedience. As the section now stands, an individual fined for the grossest acts of insubordination and disrespect to his officers, could not be imprisoned. It would be a virtual release of all, who are without property, from the obligations of obedience. To extend the exemption to fines imposed for non-attendance at parades, would in like manner be a virtual release of all, who are without property, from the obligation of attendance. It is respectfully submitted, therefore, whether the exemption should be extended to any other than fines imposed for deficiencies in arms and equipments. The ground of the proposed exemption is the want of property; and it would be more conformable to the principle on which it is founded, to make it a release from those requirements only, to the fulfilment of which the possession of property is indispensable.

“Section XV. Sections first, second, third and fourth of Title nine of Chapter tenth of Part first of the Revised Statutes and all the provisions of said Chapter, which are not in accordance with this act, are hereby repealed.”

No reason is perceived why sections first, second, third and fourth of Title ninth, Chapter tenth, Part first of the Revised Statutes should be repealed. They provide for the exemption of non-commissioned officers of infantry in the interior of the State from military duty after seven years service on certain conditions, and extend to them, as well as musicians, a deduction from the highway tax. These provisions seem no more than an equivalent for the arduous duties of non-commissioned officers in the country, particularly in warning men for trainings and elections. In discharging this duty they have, in some parts of the State, to travel many miles, always at an expense of time and sometimes of money. There is no grade of the military body subject to impositions, which would be so onerous were it not for the attending privileges, and they are compel-

led by law to serve in that capacity or pay a fine. The exemption of musicians from a portion of their highway tax is no more than an equivalent for their additional service in attending the officers' parades. These circumstances considered, it would be but just that the provisions of these sections should be retained.

"Section XVI. The Adjutant-General shall, under the direction of the Commander in Chief, cause a sufficient number of copies of this act to be distributed to officers commanding regiments and separate battalions, and to the commanding officer of each company or troop of the militia of this state."

The necessity of this section will of course depend on the ultimate disposition of the bill, of which it is a part.

As the result of the foregoing examination, it is recommended that of the act entitled "An act to reduce the parades and rendezvous of of the militia, and to amend the provisions of Chapter ten, Part one of the Revised Statutes so far as conform them to this act;" section third with an exception in favor of officers superseded by the election of juniors to command them; so much of section sixth as requires captains of companies to include conditional exempts in their company rolls; and so much of section twelfth as provides that no person shall be imprisoned for non-payment of a fine imposed for deficiencies in arms or equipments, should be adopted; and that all the remaining sections and provisions of that act should be rejected as incompatible with the accomplishment of the objects for which the military establishment is maintained, or as inconsistent with justice to individuals.

The second bill referred to is entitled "An act to amend the tenth Chapter of the first Part of the Revised Statutes relating to the militia and the public defence."

"Section I. The sixth section of the first Title of Chapter ten of the first Part of the Revised Statutes is hereby repealed."

The effect of this section is to subject to the performance of military duty the following persons heretofore exempt, except in cases of insurrection and invasion, viz: "Every person actually employed by the year, month or season, in any blooming furnace, iron-foundry, glass, woollen or cotton factory; and every student in any college or academy within this state."

The section proposed to be repealed operates as a protection of the branches of industry above enumerated by exempting from military duty all persons employed in them. The relief provided is an addition of the value of the time saved and the expense of arming and equipping to the profits of their respective occupations, and may be regarded as a bounty upon the productions of their industry. To render the discrimination in favor of those branches right in principle, they should be of greater public utility than others not protected in the same manner, and the exemption should be necessary to sustain them by securing them from competitions dangerous to their existence. If the necessity, founded upon such a concurrence of circumstances was apparent at the origin of the law, it is no longer so with regard to the two classes of persons engaged in cotton and woollen factories. Both those branches of industry are amply protected by the laws of the United States ; and it is believed that their profits are fully equal to those of any other. Their operations being carried on in a great degree by females and children, and in many cases by foreigners not naturalized, the males, who would become liable to military duty, are comparatively few, and, as a general rule, are employed at high wages. If the nature of their occupation admits of fewer interruptions than that of the farmer and mechanic, it is from that very circumstance the more productive, and they are, therefore, better able to contribute to the support of the military establishment by paying a fine for non-performance of military duty. Although the same remarks do not, in all respects, apply to persons employed in blooming-furnaces, iron-foundries, and glass-factories ; yet it is believed that these branches of industry are at least as productive as those of the great mass of citizens subject to military duty, and that they are as fully protected by public law without further discriminations in their favor. All these classes should, therefore, be made to contribute in personal service to the public defence.

But there is a more conclusive argument against the continuance of this exemption. The spirit of the act of Congress exempting certain classes from the performance of military duty is to release those only, who are engaged in rendering other services to the public, or who from the nature of their pursuits are unable to comply with any regular requisition of personal service. The officers of the civil government, and persons engaged in the care and conveyance of the U. S. mail come within the first class of persons exempted, and mariners within the second. None of these persons are exempt as a matter of indulgence, but because the performance of military duty

is incompatible with the nature of their occupations. With a few exceptions the law of this State is framed in the same spirit ; and for the sake of the principle involved it is desirable that the exceptions should be reduced to the smallest possible number.

But with regard to students in colleges and academies, it is worthy of consideration whether a repeal of the present exemption would not be productive of greater inconvenience and evil, than utility. It is well understood that this class of persons does not come within the general rule of exemption above stated ; but it is conceived that it deserves, from the peculiar circumstances of the case, to be treated as an exception to the rule. If there be any object, to the accomplishment of which every proper encouragement should be given, it is that of diffusing, as widely as possible, the advantages of education. A pervading intelligence is the surest support of our free institutions, and any enactment, which has the effect of opposing obstacles to its extension, is in operation hostile to the principles of those institutions. The consequence of repealing that part of the section relating to students, is to subject all above the age of eighteen years, to the performance of military duty. It rarely happens that the children of those whose means are abundant, are not prepared at the age of eighteen or nineteen to graduate and enter on their professional studies. The children of those, whose means are limited, are necessarily more retarded in their progress for want of early advantages ; and the result would be that the greater part of the students affected by the repeal of this exemption would belong to that meritorious class, who, with no other resources than the unassisted efforts of their own powers, are struggling to qualify themselves for professional distinction. By devoting their vacations to teaching school in villages and country towns, they are enabled to procure the means of continuing their studies during the regular terms : but with the most rigid frugality and the most industrious habits, their efforts are often unequal to the task. It is to be considered also, that in many of our collegiate and academic institutions, military corps are already formed by voluntary associations of the students, and almost all, who are able to equip themselves, or who are not designed for the profession of divinity, are found in their ranks. With this distinct organization, they have the advantage of being exercised under the supervision and control of their teachers, whereas if they were compelled to perform duty with the militia, they would be withdrawn from this salutary super-

vision, at an age full of dangers, to be exercised at a distance from their temporary guardians. Being, in most cases, away from their homes, their condition would be far more inconvenient than that of the youth of the country in general, who are enrolled under the roof of their natural protectors, and are often attended by them to the field of exercise. Neither is it to be overlooked that every student above the age of eighteen years, who goes from home, must carry with him his arms and equipments, which would become as indispensable as his books. But the leading objection is that the repeal of the existing exemption would have the effect of subjecting to a heavy imposition, a few least able to bear the burden they are already sustaining under the impulse of a spirit, which deserves to be cherished by every practicable encouragement. It would devolve the burden of arming and equipping upon students without means, who, relying upon themselves alone, have entered into unequal competition with those, who are sustained by the patronage and wealth of others. This spirit lies at the very foundation of all improvement in science, as well as the practical business of life; and it deserves to be regarded with favor by the government as one of the powers, through which inequalities of wealth and condition are to be corrected. By continuing the existing exemption all these objects are promoted without devolving on the public any additional imposition. It is, therefore, recommended that it should not be disturbed.

“Section II. The privates in the militia of this State, except such as belong to uniform companies or troops, shall not hereafter be required to parade more than once in each year, except when called into the actual service of the United States, or of this State, which parade shall be for inspection and review, at such time and place, between the first day of September and the fifteenth day of October, and either by regiments or battalions, as shall be ordered by the commandant of the brigade.”

That part of the foregoing section, which gives to commandants of brigades a discretion to direct the parade proposed to be retained either by regiments or battalions, is defective in recognizing a form of organization, which has in practice been abandoned. Under the act of congress of the 12th May, 1820, the system of discipline and field exercise observed by the regular army is established for the government of the militia. By that system, each regiment forms a battalion for manœuvring; and the only known division either in

its exercises or on the records of the Adjutant-General's office, is into companies. The system of discipline and exercise before referred to recognizes no other division of a regiment. Separate battalions are authorized by law, but their organization is totally distinct from that of regiments: a battalion, as part of a regiment, is unknown to the existing organization. To make this section correspond with it, it would be necessary to provide that the parade should be by regiments or separate battalions.

But the main provisions of this section are liable to more serious objections. They abolish all company parades, and by exacting only one parade by regiments, and that for review and inspection, virtually abandon the established system of instruction and exercise.—The change proposed proceeds upon the assumption that this system is under the absolute control of the legislative authority of the State. If this position be improperly assumed, the first question to be considered, is how far the State is competent to legislate upon the subject?

As has been already seen in another part of this report, the constitution of the United States gives to Congress the power of providing for organizing, arming and disciplining the militia, reserving to the States respectively the appointment of the officers, and the authority of training the militia according to the system prescribed by Congress. These provisions are to be regarded as the result of a compact between the original parties to the constitution, dividing between the federal and state governments, to be exercised by them respectively, certain co-ordinate powers in relation to the militia—an institution assumed by those very provisions, independently of express declarations, to be indispensable to the great objects of upholding the authority of the laws, repelling foreign invasions and maintaining the public tranquillity. It is apparent that a failure on the part of either of the proper authorities to execute the trusts respectively confided to them, would not only be fatal to the system, which they were designed to put in operation, but would be an invasion of the rights of the other by wholly defeating the exercise of its legitimate powers over the subject matter to be regulated. If Congress had failed to pass a law providing for the organization of the militia, the power of the States to appoint the officers would be defeated. By passing such a law they have devolved on the States the duty of appointing the officers according to the prescribed organization. On the other hand, if the States were to refuse to ap-

point officers, the power of Congress to prescribe an organization would be wholly annulled. The exercise of the powers respectively allotted to each, is, therefore, a matter of obligation growing out of provisions inherent in the constitution. Congress has also prescribed a system of discipline for the government of the militia; and by force of this obligation, the duty of training the militia according to the prescribed system has devolved on the States. They can no more decline under the constitutional compact, to train the militia according to the prescribed system of discipline, than they can decline to appoint officers in order to make the establishment conform to the prescribed standard of organization. The States are, of necessity, from the nature of their reservations of power over this part of the subject, judges of the extent to which the trainings shall be carried. But it is conceived that this faculty does not imply the right to dispense with trainings altogether, since it would thereby defeat the exercise of the power granted to Congress. This right might, perhaps, be justly asserted, if the militia system had no reference to the general purposes of government. But the maintenance of a militia is not designed exclusively for the benefit of the States. It is also intended to put at the disposition of the federal government, to which the general defence is entrusted, the force necessary to accomplish that object; reserving to the States such powers over it as to secure its fidelity and guard against its application to purposes of oppression. To refuse to exercise those powers, necessarily takes from the federal government the ability of executing one of the leading objects contemplated by the constitution, and has the effect of annulling one of the fundamental provisions of that instrument. If the militia were merely designed as a protection in the last resort for the residuary powers of the States, the exercise of those powers might be regarded as a matter of discretion; but the relation which the institution bears to these great ends of government, seems to render their exercise a matter of good faith, if not of imperious obligation.

In estimating the extent to which trainings under the established system must be carried, a correct decision will be facilitated by referring to the duties, which, in pursuance of its constitutional powers, Congress has required to be performed by the militia. To ensure the execution of the law of 1792, prescribing its organization and equipment, the brigade inspectors are directed to attend the regimental and battalion trainings, to instruct the officers in their duties, to examine into and report upon the condition of arms,

equipments, &c., and to enforce the system of discipline prescribed by Congress. That this part of the law may be executed, the several regiments must have their proper number of officers, and non-commissioned officers, and they must be divided, according to law, into companies. The company officers must be so far instructed in their duties as to be able to make a proper arrangement of their non-commissioned officers and men, who must, in their turn, know their places, understand the use of the musket, be able to face, wheel, break into sections, and march with some degree of concert. Unless they are familiar with these elementary exercises, they can never be put into form as a company, much less as a regiment. If there were no company trainings, there is no hazard in asserting that they would be incompetent to perform these simple movements; they could have no knowledge of company exercises; they could not be formed and put in motion as such, nor for that very reason as a regiment; for the exercises of regiments are nothing more than the combined movements of companies, regulated by the same principles, depending for their execution upon a knowledge of company exercises, and differing only in the circumstance of being carried out to an extent commensurate with the enlarged sphere and more complex character of the combination. To enable the brigade inspectors to perform their duties, the officers and men composing each regiment must come together, not as an armed multitude, but with a proper organization, and with sufficient instruction to form as a regiment. Without a knowledge of company exercises, which can only be acquired by means of company trainings, this could not be accomplished. A knowledge of the "school of the soldier," the "school of the company," and the "school of the battalion," or in general terms, a knowledge of company and regimental exercises, is the least degree of preparation, which would ensure a proper compliance with the requirements of the law. These exercises are a part of a system of tactics recently published and distributed under an act of Congress for the government and use of the militia; and the very act of prescribing it devolves on the States the duty of training the militia by it, so far as to fulfil the requirements above referred to. To obtain the necessary proficiency, at least one company and one regimental training annually would be indispensable; and with the exception of the city of New-York, the militia not unfrequently are relieved from all but these two trainings.

If these views be just, the militia system is, with regard to its exercises, reduced to the lowest standard consistent with a proper



observance of the requirements of [the laws of the United States. Any further reduction of its exercises would render nugatory the constitutional powers of Congress over the subject by defeating the execution of arrangements made in pursuance of those powers.

The constitution of the State of New-York, (art. 7, sec. 5,) provides that "the militia of this State shall at all times hereafter be armed, and disciplined, and in readiness for service." The section under consideration, by dispensing altogether with the system of exercises, is in direct contravention of this provision of the constitution: Without a knowledge of company exercises at least, the militia could with no propriety be said to be "disciplined," much less "in readiness for service." It may be considered doubtful whether the requirements of the constitution would be complied with, unless the militia were to be instructed also in battalion exercises, so far as to enable the different companies to act in concert when called into service. But to dispense with all military requisitions excepting an inspection and review, is manifestly repugnant to the spirit and letter of the provision above cited. The difficulty would not be obviated by making the regimental or battalion parade a meeting for exercise as well as inspection and review. Without company trainings it is believed, for the reasons already assigned, that a regiment would not be able to meet and organize as such; and with a single regimental parade the time consumed in organizing, reviewing and inspecting would leave none to be devoted to instruction and discipline. The militia may, therefore, be considered as reduced, with regard to its exercises, to the lowest standard consistent with the provisions of the constitution of this State.

If there be a legal impediment to the adoption of the proposed alteration, any argument drawn from the inexpediency of its adoption would be superfluous. But as much misapprehension has prevailed with regard to the utility of the existing exercises, the legal objections to their abolition will be waived for the purpose of considering them.

It has been urged that the company trainings proposed by this section to be dispensed with, are necessary to keep up the organization of the militia, and the truth of this position can hardly be called in question by those who understand the difficulty of preserving a regular order and arrangement throughout the State, with the existing exercises. As was said with regard to the abolition of

regimental trainings, the State would not possess a single regiment excepting in name ; so it may be said with regard to the abolition of company trainings, that the State would neither possess a regiment nor a company, excepting upon the records of the Adjutant-General's office. The militia would become the mere material, without any of the active properties of a military force. Its principal value is in its ability to act on sudden emergencies. The great objection to the abolition of trainings is, that it would require time for preparation, before it would be competent to act. It may, therefore, be considered as reduced, with regard to its exercises, to the lowest standard consistent with the preservation of such a degree of efficiency as will make it equal to the objects of its institution.

With those who are in favor of abolishing the established system of exercises, various theories have been proposed with regard to a substitute. With some it has been a favorite theory, in dispensing with the trainings of the great mass of citizens, and preserving a mere enrolment, to embody annually, for a few weeks, small corps of the militia for the purpose of making them good soldiers. The section under consideration proposes to dispense with the trainings without substituting a higher degree of discipline in a few corps. The theory in both cases is substantially the same ; and it is conceived to be based upon a proposition, which is altogether erroneous in point of fact, viz : that the slight degree of training, to which the great body of the militia is subjected, is of no value.

This proposition mistakes altogether the proper uses of the militia, which are essentially different from those of a regular force in a state of war. The object of training is not to make every man a good soldier ; for to the accomplishment of this object it would be necessary to sacrifice, in some degree, his character as a good citizen, by withdrawing him too long a time from his domestic occupations, and breaking up the habits of life which are best suited to the discharge of his civil duties. As has already been observed, the great object is to instruct every citizen so far in martial exercises in peace, as to enable him to act in concert with his fellow-citizens if called on to maintain the authority of the laws, and to be at all times prepared to take the field and resist the shock of invasion until a more permanent force can be created, and a higher degree of military discipline attained. This object is secured, in most cases, by the existing system of exercises, limited as it is : with capable and spirited officers it answers every purpose. There are

several brigades of infantry not uniformed in the city of New-York, which are in the habit of executing evolutions of the line with great promptitude and accuracy, and which are well prepared for acting with effect upon the most sudden emergency.

Some countenance has been given to the proposition under examination by an observation, which was not uncommon among the officers of the regular army during the late war; that an individual wholly untrained, could sooner be brought to the perfection of a soldier, than one who had been thoroughly trained in the militia. At that time the remark was, to a very considerable extent, true. The militia was trained according to Steuben's system of exercise, while the regular army was trained according to a modern system, adapted in its principles to the great changes which had been made in military science. A militiaman, thoroughly instructed in the former, had to unlearn what he had acquired before he was qualified for improving by the latter: both time and trouble were necessary to correct bad habits, and eradicate erroneous impressions. But this difficulty cannot recur. A uniform system of tactics has been prepared with great care, and prescribed by Congress, both for the regular army and militia; and the books of instruction have been distributed within the last two years among the several states and territories, for the use of their militia. The exercises, words of command, and all the rules of discipline are precisely the same, so that the utmost degree of uniformity will be secured. A militia corps brought suddenly into the field to act in conjunction with a regular force, is in no danger of being embarrassed by hearing movements directed which it does not understand, in language with which it is not familiar; but every thing is regulated by the principles in which it has been instructed, and ordered in the same words of command by which it has already been trained. Thus by closing up this fruitful source of embarrassment, the militia is not only rendered capable of executing the prescribed movements so as to accomplish the purposes of the common commander, but the very circumstance of understanding what is required to be performed inspires confidence, and makes the whole body more efficient in action. Every step which the militiaman takes under the established system, is a step towards the perfection of a soldier. Under this change of circumstances, to assert that an untrained individual can be made a good soldier in a shorter time than a militiaman, is as unwarrantable as it would be to say that an individual, who has ac-

quired the rudiments of any science, requires a longer time to be brought to perfection in its higher branches, than one who is totally ignorant of those rudiments; and there can be no better evidence of the utility of military exercises under the established system.

The theory of confiding the public defence to small bodies well trained, or in other words to volunteer corps, and of releasing the great body of the militia from all exercises, is liable to the objection of abandoning the fundamental principle of the system, independently of the difficulty of maintaining those corps upon principles consistent with the public safety, and justice to other classes of citizens. The instant a knowledge of military exercises is restricted to a few, the militia system will lose its distinctive character, which is that every citizen is a soldier; and the whole train of reasoning, which led to our present social organization, will by that very act be abandoned as erroneous. As long as the great body of the people are trained to arms, volunteer associations will be kept up; for as all must perform duty, many will prefer to perform it by uniting with their friends and intimates, and forming separate corps. The release of the great body of the people from martial exercises will destroy this motive to the formation of volunteer corps. They must be kept up by exemptions or pecuniary rewards. The former are almost always unjust to a portion of the community. An exemption from jury duty, and a deduction from labor on highways, devolve an additional burden of labor and service on those, who are left to perform it: the first is a personal tax upon a class, and the last a pecuniary tax upon property. But as personal exemptions are already nearly exhausted, for the encouragement of uniform corps, it would be necessary to have recourse to a direct compensation in money, which would be found to be exceedingly burdensome, or to exemptions from taxes, which are indirectly a compensation in money, for the services performed. It can make but little difference in the result, whether a sum of money is paid to an individual for his military service, or whether, by exempting him from a tax, he is enabled to retain an equal sum already in his pocket. The operation of these causes is so modified now by the leading impulse to the formation of volunteer corps, which is to perform duty in bodies distinct from the general enrolment, that their tendencies may not be perceptible. But if the great body of the militia were to be exempt from military duty, the leading impulse would lie in the pecuniary rewards, which in some shape or other it would be necessary to create for the purpose of

maintaining them. In times of emergency, private spirit and patriotism may be safely relied on as incentives to the performance of military duty, but it would be unsafe to trust to them in time of peace. All burdens are apt to seem unnecessary, when their utility is either remote or contingent; and they will not, for that reason, as a general rule, be voluntarily assumed. To expect volunteer corps to assume the whole burden of military duty without rewards; is to expect them to be actuated by a more liberal spirit towards the public, than the public towards them. It would be necessary to create rewards, in order to preserve them; and the militia system would instantly cease to be, (what was intended,) an organization of the whole body of the people, trained to arms for the purpose of maintaining against external and internal dangers, the public rights and their own. The creation of select bodies, compensated for their services in money, and distinguished from the mass of citizens by the exercise of those important functions which now devolve on all, would establish a precedent, from which the transition would be natural, if not inevitable, to corps more limited in numbers, on a more permanent footing, and with a higher compensation. The first effect of such a change in the established system would be to degrade uniform corps in character, to reduce their numbers, and to fill them with an inferior order of persons, by bringing their services to a pecuniary standard, which would in the outset be a mere equivalent for the necessary expense of time and money, and therefore extremely low. A high standard of compensation, it is true, would always ensure the proper character and spirit; but it would impose on the public a burden of pecuniary contribution, more oppressive than that which is now borne in personal service. But however oppressive it might be, the necessity of such a standard would become apparent, as the character and numbers of the volunteer corps should decline (for diminished numbers must be supplied by increased efficiency) and to reduce the burden of contribution so as to render it supportable, it would be necessary still farther to diminish their numerical force, and to distribute the same money among a smaller number of persons. Our internal tranquillity, and our security from external dangers would, therefore, be dependant on a few corps—a change utterly at variance with the fundamental principles of our political system; and the great body of citizens would be released from responsibilities, the very sense of which, kept alive as it is by annual exercises, is among the highest conservative principles of our civil liberties.

To suppose that a body of officers, respectable for character or qualifications, could be preserved under such a system as is proposed by this section, supposes the absence of those qualities which lie at the foundation of all military improvement. There is no pursuit, to which a spirit of pride is so essential as the military in time of peace, when its burdens are all present, and its rewards and benefits remote and contingent. No individual can be expected to meet the expenses of time, labor and money, incident to the tenure of a commission, without the opportunity of exercising command. The only reward of which he is certain, is the gratification of exhibiting the improvement of his subordinates to those, who are able to put a proper estimate upon it. The pride of appearance and the pride of discipline are very nearly related: they have their origin in the same spirit of ambition; and any thing which tends to degrade or mortify it, is fatal to the improvement of which it is the source. If there were to be no company parades, and consequently no opportunity for company officers to exercise command, even for their own improvement; if the exhibition of their qualifications were to be limited to a regimental parade, when their men, for want of the previous preparation of a company training, would come together without a knowledge of the most simple evolutions, unorganized and incapable of being reduced to order; in a word, if the officers were to be degraded into mere superintendents of undisciplined multitudes and registers of their delinquencies, it would be but reasonable to expect that the grade of intellect and character, which would fill these places hitherto of honorable trust, would speedily sink down to the level of the occupations annexed to them.

If the provisions of this section should be adopted, there is reason to apprehend that they would have the effect of destroying the uniform corps in the city of New-York, as their privileges are not extended, while their exemptions are materially abridged. If their present privileges and exemptions are no more than an equivalent for the additional service required of them, any diminution of those privileges or exemptions, to be consistent with the preservation of the corps, should be attended with a corresponding diminution of their duties. This object does not appear to be attained by the proposed alterations. The parades of the militia not uniformed in the city and county of New-York are three, one by companies, and two by regiments or separate battalions. This section proposes to reduce them to one by regiments or battalions, relieving the privates of two-thirds of the whole burden. The uniform corps do not

participate in any degree in this reduction ; and as the inducement to join them partly consists in their exemption from the duties thus reduced; the inducement is diminished in ratio of the reduction. If the inducement is already no more than sufficient to preserve them, any diminution would be fatal. That it is no more than sufficient, is apparent from the impossibility of keeping them up, so that they shall bear a uniform relation to population. Although the population of the city has increased during the last five years at the rate of nearly four and a half per cent. per annum, the increase of the uniform corps has been during the same period less than two per cent. per annum. While the population was increasing at a rate by which it would have doubled in about twenty-two years, the uniform corps were increasing at a rate, by which they would not have doubled in less than fifty. Without creating additional inducements to join them, they would, instead of increasing, rapidly decline under the proposed reduction of their exemptions.

From the peculiar local situation of the city of New-York, and from circumstances connected with its internal condition, the responsibilities and duties of the military corps, upon which its protection is dependent, are essentially superior to those of the corps in the interior of the State. However remote the chances of war may seem, a state of hostilities is to be guarded against by every possible precaution. The maintenance of a military establishment for the public defence assumes the necessity of employing it to be probable : and of every system of defence, a leading principle is to protect, with that part of its force best prepared to act on a sudden emergency, those points which are most exposed. Looking to external dangers only, the city, from its exposed situation, should be covered by a more numerous and better trained force than would be required if its position were more central. The arguments in favor of maintaining such a force, drawn from a view of its internal condition, are not less powerful and convincing. The continued extension of its commercial operations for a series of years, has made it a depot for the productions of a vast interior, which are intended for exportation ; and having acquired the character of a general mart, by far the greater part of the productions of foreign countries received in return are imported into the city for general distribution. The extent of these operations, and the vast accumulation of wealth attendant upon them, may be estimated from the fact that two-thirds of the whole impost revenue of the United States is collected at its custom-house. If a sudden blow should ever be struck by an enemy,

it would naturally be directed to that point, where it would fall with the most destructive effects. But the danger from abroad is not the only one, which is incident to this ascendancy in commerce. Wherever great wealth is accumulated, are sure to be found those vices, which seek an unlawful sustenance by preying upon it. It is well known that great numbers of persons without visible occupations have their habitations within the city; and the detection of crimes has more than once led to the exposure of organized bands of marauders depredating under the cover of secrecy upon the property of the citizens. The dangers to be apprehended from riots and resistance of the public authorities, are much increased by the presence of such an abandoned class of transient persons. That these elements of disorder have not led ere this to far more serious evils, is perhaps to be ascribed to the restraint of a numerous and well-trained volunteer force, capable of being arrayed at a moment's warning in defence of the lives and property of the citizens. If the city of Providence, with comparatively few sources of disorder, should be disturbed by a riot, which was not quelled without a military force and a loss of lives, how much greater cause is there for apprehension in the city of New-York, where the temptations and facilities exist in a much higher proportion! That it would be dangerous to trust to the municipal police to maintain the public tranquillity, is apparent from the fact that portions of the volunteer force have several times within a few years been held in readiness to quell anticipated disorders, to the suppression of which the police was avowedly incompetent. In this view, indeed, the uniform corps of the city may be regarded as a part of the municipal police, and in times of emergency by far the most efficient part. The destruction of these corps, therefore, would expose the vast wealth of the city to depredation, and the public order to scenes of violence and confusion; and it is to be apprehended that they would not only rapidly decline, but in the end be totally disorganized under the proposed reduction of the duties of the ununiformed militia, unless further privileges are extended to them. The difficulty of creating such privileges, consistently with a proper regard for the rights of other classes, and with the preservation of the spirit of those corps, has already been glanced at; but a wise policy would suggest that an additional inducement to join them should in some manner be provided simultaneously with the reduction, in order to guard against its consequences.

There is another consideration connected with the proposed reduction of trainings under this section, which ought not to be over-



looked. One of the privileges of the members of the city fire companies is an exemption from the performance of military duty ; and it has had its share in keeping up their complement of high-spirited and adventurous members. It is not contended that militia trainings, if they are unnecessary, should be continued for the purpose of preserving these companies, however important their services to the possessors of property. Their maintenance being exclusively for the benefit of property, property should in strictness pay the expense of their maintenance. If the existing burden of militia duty were useless, therefore, the argument in favor of continuing it for the preservation of the fire companies would have no force. But as the burden is necessary for the higher purposes of the public defence and the civil order, the argument against discontinuing it derives additional force from its influence upon those companies. The performance of military duty being exacted during a certain period of time from all classes with a few exceptions, without reference to numbers, the exemption of firemen devolves no additional burden upon any other class. In this respect it differs materially in principle and in operation from their exemption from jury duty. A certain number of jurymen being required annually, and being selected from a certain class of citizens, the exemption of firemen from that duty diminishes the number from which the selection is made, and thereby devolves an additional burden on the diminished number. This exemption is a privilege, which is purchased by a poll tax paid by a certain class of citizens for the protection of property. It is possible that the increased burden may be so light that the pressure is not very perceptible ; but the lightness of the burden does not affect the principle. If the performance of militia duty were useless, it would come within the same principle, and with a force proportioned to the greater number of those who perform the service ; but being necessary, it is not liable to the same objection. The question presented in the proposition to reduce militia parades, is, whether a necessary burden shall be discontinued, with the effect, among others, of disorganizing a body of men upon whose exertions the safety of an immense property depends. It might be added, also, with the further effect of rendering necessary a resort to measures objectionable in principle ; for if the proposed reduction of the number of parades be adopted, some further personal exemption would be necessary to countervail its operation. It is believed that a pecuniary compensation would not accomplish the object ; that the spirit, which constantly leads the members of those companies to encounter the most imminent dangers, and sometimes to sacrifice their lives in the per-

formance of their duties, is not to be purchased by pecuniary rewards; that their places would be filled, as has been said of uniform corps, by an inferior order of persons, the moment their services were to be estimated by a mercenary standard; that the companies would become less efficient, property be less secure, and the rates of insurance rise in proportion. To guard against these evils, it would be necessary to create additional personal exemptions, and the burden of these would fall unequally upon certain classes of the community. While the present parades of the militia are continued, such a resort will probably be unnecessary, although there is some difficulty now in keeping up the requisite number. If this section should be adopted, it would be necessary that some provision should be made at the same time for the preservation of these vigilant and enterprising guardians of the public wealth.

It is one of the consequences of the compactness of a city population, although its condition is such as to require a more efficient force for its protection from internal, and sometimes from external, dangers, that such a force may be prepared without devolving on it a greater burden than that which is sustained by a country population in preparing a less efficient force. In the interior the beat of a company often includes several square miles, and a regiment frequently comprises several towns within its beat. To attend the company parade its members are therefore compelled to travel three or four miles; and to attend the regimental parade six and eight miles, and sometimes fifteen or twenty. The members of city corps, on the other hand, meet almost at their own doors both for company and regimental trainings. Their attendance is required during fewer hours; they lose no time in travelling; and they incur no expense in procuring meals away from home. The three parades of the city corps are for these reasons far less burdensome than the two parades in the country. The higher responsibilities which devolve on them, and the greater necessity of maintaining a vigorous tone of preparation are all met with less sacrifice of time, money and personal service.

The parades in the country, although comparatively more burdensome than in the city, are not essentially so much so as at first glance might be supposed. For the privates, with the exception of a few counties, in which population is thin, and considerable distances are to be travelled to the place of rendezvous, only two days are required for martial exercises. The great body of the people are liable to the performance of military duty during the term of twenty-

seven years, (from eighteen to forty-five years of age,) making in all fifty-four days consumed in preparing them for the discharge of the highest duties that can devolve on freemen—the protection of their lives and property from external dangers, the preservation of the public order, and the maintenance of a system of government, which they have themselves constituted, and which they are constantly directing, through the control exercised over it by the right of suffrage, to the promotion of the general good. There is no other people, on whom so slight a burden of military contribution is imposed for the public defence alone; nor is there any other, who are charged with the execution of such elevated civil functions. The days devoted to martial exercises have their advantages in other respects also: they afford relaxations from the labors and business of life—relaxations, which, if those exercises were abandoned, might be sought for by a considerable portion of those, who perform military duty, in occasions of less utility to themselves. The regimental meetings in the country are, by a great many of those who are required to attend them, made subservient to the purposes of business and of social communications with their acquaintances and friends in adjacent towns; so that they are looked upon, as a general rule, without vexation or regret.

It has been common, with a view to show the oppressive character of the militia parades, to estimate in money the value of the days consumed in them, and exhibit the aggregate amount as a public loss. This is obviously an unfair method of computation. In the country most persons by timely arrangement, which the legal notice of the trainings enables them to make, may so dispose of their business as to spare a day or two annually without any considerable sacrifice. There are few occasions of public festivity, that would not be likely to be as numerously attended as a militia training. Indeed, the trainings themselves are generally attended by large numbers of those, who have become exempt by serving out the prescribed period in the ununiformed militia or in volunteer corps. But even admitting that a pecuniary estimate of the value of the days consumed in military exercises is a proper criterion of the pressure of the service on those who perform it, the question will still recur whether the service is necessary. If it be, any argument drawn from the pressure of the system will be overruled by the necessity of maintaining it. Otherwise, a similar estimate would be fatal to every institution connected with the performance of our civil duties. The number of days lost in attendance upon juries for the

purpose of distributing justice between man and man, and the time consumed in exercising the right of suffrage, might be made the subject of pecuniary computation to prove, in one case, the utility of confiding the decision of disputed questions of right to the judges without the intervention of a jury, and of electing public officers, in the other, for a longer period of time in order to guard against the frequent recurrence of days of election. The objects of maintaining a military establishment are not less important than these; for what would avail an impartial administration of justice or a careful delegation of political power, if that security from external invasion and internal disorders, which is the very essence of our public prosperity, were not provided for by an efficient system of military preparation, upon principles consistent with the preservation of our civil liberties! After all, the necessity of the burden is the only standard, by which the performance of military duty should be settled; and this has already been sufficiently considered in other parts of this report.

“Section. III. Every non-commissioned officer, musician and private of any uniformed company or troop, who shall uniform and equip himself, and whose term of service in any such company or troop shall amount to ten years from the time of his enrolment therein, shall be exempt from military duty, except in case of insurrection or invasion.”

With the exception of the members of certain corps specially provided for, the present law exempts from military duty non-commissioned officers, musicians and privates, who have served in uniform companies during the term of fifteen years. This section proposes to reduce the term of service to ten years. If the provisions of section second were to be adopted, and the parades of the militia not uniformed were to be reduced to one, such a reduction in the term of service of uniform corps would be necessary to their preservation. But if the provisions of section second should not be adopted, section third ought not to be, as the inducements to the formation of uniform corps are sufficient under the existing law with the present term of service. It is presumed that this was the view of the framers of the bill, as the duties of uniform corps are voluntary, and therefore that the proposed reduction was not intended to relieve them of a burden, but to provide for their preservation.

“Section IV. So much of the second section of the tenth Title of Chapter ten of the first part of the Revised Statutes as requires the

commissioned and non-commissioned officers of any company or troop, which is not uniformed, to meet for military improvement more than four times in any year is hereby repealed, and they shall hereafter be required to meet only four times in each year."

This section reduces the number of meetings from eight to four, and is applicable only to the officers and non-commissioned officers of infantry in the city of New-York. If the parades of the privates should be reduced to one, the parades of the officers and non-commissioned officers should be reduced as proposed. With regard to the latter it would be no more than just; and with regard to the former it could not be expected, otherwise, that there would be any candidates for commissions, when the inducements to accept them are so much diminished. Indeed, it is doubtful whether, with the proposed reduction there would be any respectable candidates for commissions if section second should be adopted for the reasons already assigned in the examination of that section. If section second should not be adopted, this section should not be. Although the duties of officers may seem onerous, there is no complaint from them. They are not compelled to accept commissions: their service is perfectly voluntary; and it is but just to them to say that their duties are, as a general rule, performed with spirit and with a proper sense of their responsibility.

"Section V. All persons residing in this State, who may be averse to bearing arms from conscientious scruples, not otherwise exempt by law, may be free from all military requisitions in time of peace, by complying with the following terms: every such person, on paying the sum of two dollars to the trustees of common schools in the district in which he may reside, for the benefit of common schools, in lieu of all other military requisitions and commutations in time of peace: Provided, that, on or before the first Monday of June, in each and every year, he produces to the commanding officer of companies, in whose beat he may reside, a certificate signed by two of the trustees of common schools in his district, that he has actually complied with the provisions of this act."

The constitution of the State of New-York, (art. 7, sec. 5,) provides that "all such inhabitants of this State, of any religious denomination whatever, as from scruples of conscience, may be averse to bearing arms, shall be excused therefrom by paying to the State an equivalent in money; and the legislature shall provide by law

for the collection of such equivalent, to be estimated according to the expense, in time and money, of an able bodied militia-man.”

The existing militia law has already provided for these cases, and the only points, in which the 5th section of the bill under consideration differs from it, are—1st. In requiring a certificate to be produced by the person commuting to the captain of the company, within the beat of which he resides, on or before the first Monday of June, that the contribution has actually been paid to the trustees of common schools. Under the existing law a notice of an intention to commute is required to be given to the captain of the company, on or before the first day of April, and a list of all such notices is furnished by him, through an assessor, to the supervisor of the town, and the money is collected of the persons by whom the notices are given. 2d. It fixes the commutation at two dollars instead of four; and 3d. It applies the proceeds to a specific object, instead of being paid into the county treasury for general purposes.

1st. No reason is perceived why the change in the mode of payment should be made. In one case the commutation is paid to the assessor on application to the individual, who has given notice of his intention to commute, and in the other it is the duty of the individual himself to seek the trustees of common schools, and make the payment. The proposed mode would be more inconvenient to those, who are affected by it, and it is not perceived that any thing would be gained by the public. If a person having conscientious scruples, fails to give notice of his intention to commute under the existing law, he is summoned before a court martial, and a fine is imposed on him to the amount of the commutation. With the proposed change, the result would be the same, if he should fail to make payment and produce a certificate from the trustees of common schools, as that part of the militia law is not repealed by this section. It is recommended, therefore, that the mode of payment should be the same.

2d. In fixing the commutation, the only question is, what is an equivalent for the annual expense, in time and money, of attending the established parades according to law. The estimate being once made, and the amount fixed by the Legislature, the constitution leaves on power to augment it from considerations of policy, or to diminish it from motives of indulgence.

It is to be observed that the relief provided by this section for persons having conscientious scruples, is not only an exemption from the parades required by law, but from the expense of arming and equipping. In this view, the proposed contribution does not appear commensurate with the exemption, for which it is exchanged. The parades of the infantry not uniformed, in the interior of the State, are two, and the fine usually imposed for non-appearance without excuse, seven dollars. Fines are not intended as a commutation for the service, for the non-performance of which they are imposed.—The object in imposing them is to secure the performance of the service, and not to secure to the public an equivalent. They are, therefore, as a general rule, more than equivalent: if they were not so, they would not accomplish the purpose for which they are intended. Seven dollars per annum is obviously more than an equivalent for the two days' service, and that portion of the expense of arming and equipping, which would fall to each year of enrolment. But the sum to be paid by the persons proposed to be relieved by this section should, in the absence of any constitutional provision, be as nearly as possible an equivalent, the very foundation of the relief being an equal contribution to some other object of public utility. The expense of arming and equipping is not far from twelve dollars; and during the twenty-seven years' service required by law, there would be on an average a deterioration of fifty per cent. in the arms and equipments.

The two days' service required annually may be estimated at	\$1 50
Interest on twelve dollars, the expense of arming and equipping, .....	84
Deterioration of arms and equipments, .....	22
Expense of attending two parades, (average 25 cents each,) .....	50
	<hr/>
	\$3 06

Three dollars would, if this estimate be correct, not be far from a fair equivalent for the exemption.

3d. To render the exemption complete, the application of commutation moneys should have no reference to objects connected with the performance of military duty; under the existing law they are not so applied. They are paid into the county treasury for general purposes, excepting particular cases, in which they go to the benefit of the poor of the county. Under the proposed alteration they would be applied to the use of common schools, thereby affording to persons having conscientious scruples a perfect security

against a possible appropriation of any portion of their contribution to military objects. No reason is perceived why this indulgence may not with propriety be extended to them. It is conceived, however, that the appropriation of commutation moneys to the use of the common schools of the district, within which the persons paying them reside, is objectionable on the score of its inequality, as those districts which comprise within their limits societies having conscientious scruples, would be unduly benefitted by such a provision. The exemption is from a burden, which is borne by the whole community; and it would be proper that the equivalent should be distributed as equally as possible for the general benefit. It is, therefore, recommended that commutation moneys shall be collected as they are under the existing law, and paid into the treasury of the State, to be passed to the credit of the common school fund.— If this proposition be accepted, the only change required in the existing law would be a reduction of the amount of the equivalent to be paid from four dollars to three.

“Section VI. No person shall hereafter be imprisoned for the non-payment of any military fine imposed for not appearing at any parade, or for not being equipped according to law.”

For the reasons assigned in the examination of section twelfth of the first bill under consideration, it is recommended that the exemption from imprisonment for non-payment of military fines should be limited to those cases, in which fines are imposed “for not being equipped according to law.”

As the result of the foregoing examination of the bill entitled “An act to amend the tenth chapter of the first part of the Revised Statutes relating to the militia and the public defence,” it is recommended that section first should be adopted, excepting so far as it proposes to subject students at colleges and academies to military duty; that instead of section fifth the existing law, with regard to persons having conscientious scruples against bearing arms, should be amended so as to fix the equivalent in money at three dollars instead of four, and to require it to be paid into the treasury of the State to the credit of the common school fund; that section sixth should be adopted with the exception of that part which relates to fines imposed for non-appearance at parades; and that all the remaining sections and provisions should be rejected as incompatible with the objects, for which the militia system is maintained.



Having thus discharged the duty assigned to him by examining the specific provisions of the bills referred, any further examination of the subject by the Adjutant-General may possibly be considered as an unauthorized interference with matters not submitted for his opinion. He ventures, however, to trust to the indulgence of the Senate, for suggesting what he understands to be the true causes of discontent in relation to the existing militia law, and for pointing out what he conceives to be the proper remedies. He has been the more strongly incited to this course, as he has felt it his duty to report unfavorably upon the main provisions of the two bills referred to him, and is, therefore, anxious to guard against the inference which his silence might authorize, that he considers the militia system susceptible of no improvement. His objection to those bills is, that without reaching the real defects of the system, they provide for alterations which would be altogether destructive of its usefulness. He regards the militia law of this State, setting aside a few inconsiderable defects, as superior to any other which he has examined; and he is not aware of any very material alterations, with one exception, which can be introduced without exceeding the just limits of the authority of the State over the subject. At the same time, he conceives that material improvements of the system, under the powers of Congress, are not only practicable, but necessary.

If the views presented in the foregoing examination be just, the exercises of the militia are reduced to the lowest standard consistent with the preservation of a proper degree of efficiency. But, although a less efficient militia might not answer the purposes of its institution, it is conceived that a less numerous force would be fully adequate to those purposes; that the burden of military duty may be lightened consistently with all the ends which the system is intended to secure, by an abridgment of the period, during which military duty is required to be performed, and consequently by a reduction of the number of persons liable to perform it. The power of Congress to provide for the organization of the militia, includes the right to specify the extent of the enrolment; and by the law of 1792, all free able-bodied white male citizens, between the ages of eighteen and forty-five years, are required to be enrolled. Although the condition of the country at that period rendered it indispensable to carry the enrolment to so great an extent, no such necessity is apparent in its present condition. At the period referred to, the federal government had hardly gone into operation,

and it was difficult to foresee, in the unsettled state of the union during the ten or twelve years subsequent to the acknowledgment of our independence, what degree of preparation might not be necessary against internal commotions. Our western frontiers were exposed to the incursions of numerous tribes of Indians, who had been stirred up by recent contests to the most fierce and vindictive animosities. Some of our fortresses were still in the possession of Great Britain, who, under the pretence of securing the adjustment of disputed questions, refused to surrender them. All these circumstances rendered not only an efficient force necessary, but a general enrolment for the purpose of securing, as far as possible, at every point, a proper preparation against the dangers to which it was exposed. The scarcity of population in proportion to territorial extent, would alone have required so extensive a preparation. Even with the prescribed organization, an adequate protection could not be secured, excepting at a few points along the coast, without resorting to the military force of remote districts. All these sources of danger are partially, and some of them entirely, closed up. The harmonious action of the federal and state authorities, the extension of our settlements in the west, the vast increase of our physical power in population, wealth and facilities of internal communication, the construction of extensive fortresses upon the vulnerable points along our coast, and the moral influence of all these causes combined, upon other countries, have obviously diminished the necessity of maintaining a force regularly increasing in ratio of our increasing numbers. The rule of enrolment under the law of 1792 being founded upon age, the numerical force of the militia must always bear nearly the same relation to population. An estimate of our dangers, founded upon a careful survey of our condition, makes no longer a part of the standard by which the numerical force of the militia is determined; whereas the only true criterion is conceived to consist in such an estimate. It is our change of condition, which has rendered false and oppressive in its application a standard, which was just when it was originally assumed. The cause of the difficulty has not been generally perceived; and it is for this reason that the authority of the State has been arraigned for the existence, and appealed to for the redress, of evils, which have their origin in the laws of Congress, and which must derive their remedies from the same source. It is due to the State, that the responsibility should be made to rest where it belongs, and the just claim which the public has to be relieved from so much of the burden as is un-

necessary, should be addressed to the authority which is alone competent to provide the required relief. If, as has been supposed, the true ground of discontent is, that a numerous class is subjected to military duty, who might be exempt without diminishing the general strength or security, and without casting an additional burden upon the remaining classes; the true remedy for the evil is in a modification of the law of 1792, which Congress alone can alter or annul.

One of the advantages of this mode of relieving the people of a portion of the burden is, that it would maintain unimpaired all the principles, upon which the militia system is founded. If the period of liability to the performance of military duty were reduced from twenty-seven years to fourteen, by taking its commencement at the age of twenty-one instead of eighteen, and its termination at thirty-five instead of forty-five, the result would still be to put every citizen through fourteen years of military exercise and discipline, which would be sufficient to prepare him for usefulness in case of insurrection or invasion, while the burden of military duty would be diminished nearly one-half, and a force sufficiently numerous for all the purposes of the government would still be maintained. By exempting the whole body of the militia, as proposed by the bills which have been examined, from a portion of their burden, the efficiency of the system would be destroyed; whereas, by exempting a portion of the militia from the whole burden, we may preserve its efficiency, and maintain a force fully adequate to our necessities. In either case the aggregate relief is nearly the same.

By maintaining the present organization in all other respects, a larger force, should it be required, might be prepared at once by merely extending the enrolment to ages either above or below, or both above and below, the existing limitation. Thus, in case of hostilities, there would be nothing to create anew, and the transition from peace to war would be accomplished without the confusion and delay inseparable from the necessity of organising a system at the very moment when it should be put in operation. In the southern states, where, from the nature of their population, the sources of internal danger are more numerous, the necessary provision against them might be made by keeping up, at their discretion, in time of peace, a more extended enrolment.

It will be observed that the enrolment above suggested, proposes to exempt all minors from the performance of military duty in time

of peace, by limiting the commencement of the enrolment to the age of twenty-one years; and it is believed that the rule is founded upon principles, the justice of which cannot be drawn into controversy. The personal service, which a government may properly demand in all cases of those, who live under its protection, is conceived to be due from such only as are admitted to a full participation in its benefits. Minors are excluded from some of the highest functions and privileges of citizenship, particularly from the exercise of the right of suffrage, and from eligibility to office; and by reason of this exclusion, they are denied all influence over the measures of government. The law treats them as infants, with regard to the most important franchises of citizens; and it is worthy of reflection, whether it should treat them as citizens with regard to services. If it be a principle that burdens and benefits shall be proportioned to each other, it would seem proper that the exclusion in this case should be attended by the exemption suggested. Occasions of extraordinary emergency may properly be considered as exceptions to the rule. In times of public danger, when the lives and property of all are in some degree at hazard, the country has a right to the services of all who are capable of rendering service. It is conceived, too, that the relations of parent and child, guardian and ward, and master and apprentice, should be disturbed only in extreme cases. The effect of subjecting minors to military duty, is to withdraw them, for the time being, from the control of those whom the law holds responsible for them. This is to insist on a responsibility, and at the same time to deprive the responsible person of the power of providing against its consequences. Nothing can well be fancied, which is more oppressive than to levy upon the property of a master a fine imposed upon an apprentice for insubordinate and disorderly conduct on a day of martial exercise, when the latter is withdrawn from his control. Another oppressive effect of the liability of minors to military duty, is the unequal burden which it imposes. A master with half a dozen apprentices between the ages of eighteen and twenty-one years, bears the burden of seven persons, while he only enjoys the political privileges of a single one. It is not uncommon for a farmer in the country to have two sons between the ages of eighteen and twenty-one years, before he has himself attained the age of forty-five. He is consequently compelled to equip and perform the duty of three persons. Independently, therefore, of the principle involved, the practical inconveniences of this part of the system are too burdensome and unequal to be continued in time of peace.

It may be suggested that an exemption from military duty at that period of life when the stimulus to perform it is greatest, would seriously impair the spirit of the militia. Without insisting upon the principle of the exemption, it is to be considered that the greater part of the young men of military spirit, who become liable to perform duty, immediately unite themselves to uniform corps, and in a great many instances under the present law, before they have attained the age of eighteen years. This early commencement of their military service is to be traced to the provision of the existing law, which exempts them after fifteen years' service. To them it can be of no consequence whether their term of service commences at an earlier or later period. By continuing this provision, with such a reduction of the term as to preserve the same relation which it now bears to the general enrolment, the same object will be secured, as far as it can be without injustice. Young men will commence their service at the period when the impulse is strongest, if they can procure the consent of their natural or legal protectors; so that many of those who are fitted to add to the spirit of the military establishment may still be preserved. Those only will be excluded, who cannot obtain the requisite consent; and without it military service, for the reasons assigned, ought not to be exacted by the government.

The relief which would be afforded by the suggested diminution of the period of enrolment, will appear from the following estimate. According to the census of this State for the year 1820, the males between the ages of eighteen and forty-five years, were about one-fifth of the whole population, and of these about one-half were enrolled. About one-fourteenth part of the whole population were males between the ages of eighteen and twenty-one, and thirty-five and forty-five; and it is estimated, for exact certainty is not to be attained, that the same proportion of these were enrolled. Assuming this as the basis of the estimate, the military force of the State in the year 1830 should have been 191,000, (which is about the real number,) the population according to the late census being 1,919,404 souls. Of this number about one-fourteenth part would be within the ages proposed to be excluded by the new enrolment, and assuming that one-half only are enrolled, this would be a deduction of about 70,000 persons from the aggregate military force, which would be reduced to 120,000. This estimate is not, perhaps, strictly accurate, but the result will not differ materially from it. Seventy thousand persons, therefore, would be relieved of the

burden of military duty, by adopting the proposed alteration in the established period of enrolment, and more than one-third of the whole burden would be removed.

There is another burden imposed by the law of 1792, which is far more onerous than the burden of personal service, and it is the more oppressive, as it is conceived to be wrong in principle. By the provisions of that law, every person liable to do military duty is required to provide himself with a musket and equipments, the price of which is not less than twelve dollars. The effect of these provisions is to impose on all who perform military duty, in addition to the personal service required of them, a capitation tax to that amount. The inequality of this requisition is exceedingly oppressive, falling as it does without distinction, upon those who are worth but one hundred dollars, and those who are worth one hundred thousand; and so generally has it been evaded by borrowing and hiring arms and equipments, that probably not one-half of the militia of this State is armed and equipped in good faith, according to law. This fact alone shews the propriety of a different provision. The services which citizens owe to their government are two-fold, personal and pecuniary. The first is, from its nature, not susceptible of apportionment between individuals, but must be rendered equally by all. The second is apportioned upon the basis of property, and is, therefore, paid unequally by those on whom it is imposed, by reason of the unequal value of their respective possessions. The military duty required of all within certain ages, comes within the rule of the first; and the right to exact it on principles of justice cannot be disputed. But when an individual is called on to provide instruments of offence, he is required to render a pecuniary service, which, to be just, should be in ratio of his property. There is a violation of one of the first principles of political justice in imposing the burden, without discrimination, upon all. The right of the government to compel a portion of the militia to organize as artillery is as perfect as the right to require them to organize as infantry. Nor is any reason perceived why it may not, with the same propriety, compel each company of artillery to provide a piece of cannon, without which its services would be of no avail, as to compel each company of infantry to provide the muskets and equipments, without which its services would be unavailing. The injustice of the imposition lies in the circumstance of founding it upon the basis of personal service, instead of pecuniary contribution. The truth of this position is conceded by an act of Congress, passed the 23d April,

1808, entitled "An act to provide for arming and equipping the whole body of the militia of the United States," and intended to remedy the unequal operation of the law of 1792. But although the injustice of the requisitions of this law is admitted, the provisions of the law of 1808 are altogether inadequate to the object intended to be accomplished, and further legislation by Congress is necessary to provide a remedy for the former. Congress alone has power, under the constitution of the United States, to provide for arming the militia, and it is a step towards its execution to admit, as the law of 1808 does, that it is not executed by requiring every citizen liable to military duty to arm himself. The accomplishment of the object will require time, and there may be some difficulty in arranging the details of the system; but it is considered both practicable and within the compass of our public resources. The difficulty attending it, however great it may be, is no argument against its adoption, if the present mode is wrong in principle and oppressive in its application.

Bills providing substantially for the improvements in the militia system above suggested, have heretofore been submitted to Congress; and to secure their adoption, it is believed only to be necessary that it should be urged by the united efforts of some of the principal States. A more favorable period than the present, has, perhaps, never before been presented. The subject has already attracted the attention of the able and enlightened chief of the War Department, and has been recommended to the consideration of Congress. The Legislature of Massachusetts, at their last session, declined acting upon a bill providing for essential alterations in the militia system of that State, under the expectation that it would be acted on by Congress, and that the necessary remedies would be provided for its prevailing defects throughout the Union; having become convinced, after mature consideration, that the paramount powers of Congress over it opposed an insuperable barrier to the action of State legislation upon it to such an extent as to accomplish the desired objects; that it was difficult even to break down the system, much more to remedy its deficiencies, so long as the law of 1792 continues in force. It is understood that the State of Virginia, under the impulse of a recent disturbance, has also turned her attention to the subject, and with an earnestness proportioned to the extent of that calamity. The co-operation of the State of New-York with those two States, the earliest and the most efficient agents in organizing and putting in operation the political institutions, of which the

militia is an essential part, could hardly fail to secure the introduction of the proposed amendments.

The acknowledged defects of the present militia system, and the dissatisfaction which they have produced, indicate the propriety of providing a remedy for them at the earliest possible day, independently of the injustice of continuing burdens which may be dispensed with consistently with the public good. It is one of the ill effects of all abuse, that the just discontent which it creates, is apt to degenerate into a prejudice against the institutions, with which the abuse is connected, by confounding that which is useful with that which is unnecessary and oppressive. The most ready and effectual mode of re-establishing the system in the public confidence, is to correct its defects, and thus ensure a general assent to its importance in its amended form. It is, therefore, earnestly to be hoped that an application may be addressed to the proper authority, under such circumstances as to render its success speedy and certain. Nothing could be more animating to the enemies of liberal government, than to behold the people of the United States, under the influence of inconsiderable evils, voluntarily laying aside their arms, and declining to prepare themselves by exercise and discipline for the preservation of social institutions and privileges, which their ancestors purchased with years of suffering and a profuse expenditure of treasure and blood. No other event, it is conceived, would furnish evidence so conclusive of the decline of that moral spirit in the people, upon which our public liberties are dependent.

As a final observation, it may be remarked, that by impairing the efficiency of the militia, the strongest argument is furnished in favor of increasing the regular army. Whenever it shall become apparent that the former is inadequate to the public defence—a period which may be indefinitely postponed by a continuance of martial exercises—the whole responsibility of maintaining the public order must be confided to regular troops, in the pay and under the control of the central government. Under such circumstances, the close of a war would no longer be a signal for disbanding the army employed in carrying it on; but it would be kept up as a provision both against internal and external dangers. Without reference to the incompatibility of this order of things with the great principles of our political system, the vast expense of such a military preparation would be a constant drain upon our public wealth, and impair our ability to meet future exigencies, by diverting our resources from the higher



and more beneficial purposes of improving our internal condition. In a word, it is only under the protection of the militia system that the country is enabled, at the termination of every contest, to lay aside the more massive and burdensome parts of its armor, and to become prepared, with energies renewed by that very capacity, for succeeding scenes of danger.

Respectfully submitted,

JOHN A. DIX.

# No. 5.

## MEMBERS AND OFFICERS COMPOSING THE SENATE OF THE STATE OF NEW-YORK, WITH THEIR RESPECTIVE *Districts, Classes, and Places of Residence.* FIFTY-FIFTH SESSION, 1882.

*Hon. EDWARD P. LIVINGSTON, President, Eagle Tavern.*

NAMES.	Dis	CLASS.	PLACE OF RESIDENCE.
Stephen Allen, . . . . .	1	first,	Eagle Tavern.
Thomas Armstrong, ....	7	second,	Merchants' Hotel.
Levi Beardsley, . . . . .	6	second,	Congress Hall.
John Birdsall, . . . . .	8	fourth,	Misses Lewis.
Alvin Bronson, . . . . .	5	second,	American Hotel.
Trumbull Cary, . . . . .	8	third,	Congress Hall.
Jonathan S. Conklin, ...	1	third,	Merchants' Hotel.
Harman B. Cropsey, ...	1	fourth,	do.
William Deitz, . . . . .	3	second,	do.
William I. Dodge, . . . . .	4	third,	Congress Hall.
Lewis Eaton, . . . . .	3	first,	Eagle Tavern.
John W. Edinonds, ....	3	fourth,	Mansion House.
Josiah Fisk, . . . . .	4	fourth,	do.
Henry A. Foster, . . . . .	5	third,	Congress Hall.
Philo C. Fuller, . . . . .	8	first,	Bement's Hotel.
Isaac Gere, . . . . .	4	second,	Merchants' Hotel.
Jehiel Halsey, . . . . .	7	fourth,	
John F. Hubbard, . . . . .	6	first,	Eagle Tavern.
Robert Lansing, . . . . .	5	fourth,	City Hotel,
Charles W. Lynde, ....	6	third,	Bement's Hotel.
Allan Macdonald, . . . . .	2	fourth,	Congress Hall.
Hiram F. Mather, . . . . .	7	first,	Bement's Hotel.
William H. Maynard, ..	5	first,	Congress Hall.
John G. McDowell, ....	6	fourth,	Manision House.
John McLean, Jr. . . . .	4	first,	Congress Hall.
Herman I. Quackenboss,	3	third,	Columbian and National Hotel.
Samuel Rexford, . . . . .	2	first,	do.
William H. Seward, ....	7	third,	Congress Hall.
Alpheus Sherman, . . . . .	1	second,	Misses Lewis.
Nathaniel P. Tallmadge,	2	second,	Congress Hall.
Albert H. Tracy, . . . . .	8	second,	do.
David M. Wescott, . . . . .	2	third,	Columbian and National Hotel.

JOHN F. BACON, Clerk, Office 64 State-Street.

JAMES LIVINGSTON, Sergeant-at-Arms, Mansion House.

JAMES D. WASSON, Door-keeper, No. 22 La Fayette-street.



**No. 6.**

**IN SENATE,**

**January 7, 1832.**

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**Standing Committees of the Senate.**

**JANUARY, 1832.**

*On Claims.*

Mr. Hubbard,  
Mr. Sherman,

Mr. Fuller.

*On Finance.*

Mr. Bronson,  
Mr. Dodge,

Mr. Fisk.

*On the Judiciary.*

Mr. Beardsley,  
Mr. Tallmadge,

Mr. Edmonds,

*On the Militia.*

Mr. Foster,  
Mr. Deitz,

Mr. Gere.

*On Canals.*

Mr. Edmonds,  
Mr. Hubbard,

Mr. Armstrong.

*On Roads and Bridges.*

Mr. Westcott,  
Mr. Lynde,

Mr. Halsey.

*On Literature.*

Mr. M'Lean,  
Mr. Mather,

Mr. Lansing.

*On the State Prisons.*

Mr. Macdonald,  
Mr. Allen,

Mr. Seward.

*On Banks and Insurance Companies.*

Mr. Allen,  
Mr. Beardsley,

Mr. Eaton.

*On the Division of Counties and Towns.*

Mr. Dodge,  
Mr. Conklin,

Mr. M'Dowell.

*On Agriculture.*

Mr. Rexford,  
Mr. Gars,

Mr. Cropsey.

*On Manufactures.*

Mr. Armstrong,  
Mr. Quackenboss,

Mr. Cary.

*On Privileges and Elections.*

Mr. M'Dowell,  
Mr. M'Lean,

Mr. Westcott.

*On Enrolled Bills.*

Mr. Mather,  
Mr. Seward,

Mr. Foster.

*On Indian Affairs.*

Mr. Lansing,  
Mr. Conklin,

Mr. Birdsall.

*On Expiring Laws.*

Mr. Tracy,  
Mr. Macdonald,

Mr. Cropsey.

*On Expenditures.*

Mr. Eaton,  
Mr. Cary,

Mr. Quackenboss.

*On the Incorporation of Cities and Villages.*

Mr. Maynard,  
Mr. Sherman,

Mr. Birdsall.

*On Rail-Roads.*

Mr. Tallmadge,  
Mr. Maynard,

Mr. Halsey.

**Select Committees on the Governor's Message.**

*In relation to Insane Poor and County Poor-Houses.*

Mr. Sherman,  
Mr. Bronson,

Mr. Deitz.

*In relation to the Survivors of the Revolutionary War.*

Mr. Fisk,  
Mr. Fuller,

Mr. Rexford.

THE UNIVERSITY OF CHICAGO

DEPARTMENT OF THE HISTORY OF ARTS  
AND ARCHITECTURE

1954-1955

# No. 7.

## MEMBERS OF THE SENATE,

WITH THEIR RESPECTIVE

*Districts, Classification, County, and nearest Post-Office.*

FIFTY-FIFTH SESSION, 1882.

HON. EDWARD P. LIVINGSTON, *Lieutenant-Governor & President,*  
COLUMBIA—CLERMONT.

DISTRICT.	COUNTY.	NEAREST POST-OFFICE
<i>First District.</i>		
Stephen Allen, .....	City & Co. of N. Y.	City of New-York.
Alpheus Sherman, .....	do do	do
Jonathan S. Conklin, ...	Suffolk, .....	Easthampton.
Harman B. Cropsey, ...	Richmond, .....	Richmond.
<i>Second District.</i>		
Samuel Rexford, .....	Delaware, .....	Sidney Plains.
Nathaniel P. Tallmadge,	Dutchess, .....	Poughkeepsie.
David M. Westcott, ....	Orange, .....	Goshen.
Allan Macdonald, .....	Westchester, .....	White-Plains.
<i>Third District.</i>		
Lewis Eaton, .....	Schenectady, .....	Lockport.
William Deitz, .....	Schoharie, .....	Schoharie C. H.
Herman I. Quackenboss,	Greene, ....	East-Hunter.
John W. Edmonds, ....	Columbia, .....	Hudson.
<i>Fourth District.</i>		
John M'Lean junior, ...	Washington, .....	Salem.
Isaac Gere, .....	Saratoga, .....	North-Galway.
William I. Dodge, .....	Montgomery, ....	Johnstown.
Josiah Fisk, .....	Clinton, .....	Keeseville.
<i>Fifth District.</i>		
William H. Maynard, ...	Oneida, .....	Utica.
Alvin Bronson, .....	Oswego, .....	Oswego.
Henry A. Foster, .....	Oneida, .....	Rome.
Robert Lansing, .....	Jefferson, .....	Watertown.
<i>Sixth District.</i>		
John F. Hubbard, .....	Chenango, .....	Norwich.
Levi Beardsley, .....	Otsego, .....	Cherry-Valley.
Charles W. Lynde, ....	Cortland, .....	Homer.
John G. M'Dowell, ....	Tioga, .....	Chemung.
<i>Seventh District.</i>		
Hiram F. Mather, .....	Onondaga, .....	Elbridge.
Thomas Armstrong, ....	Wayne, .....	Butler.
William H. Seward, ....	Cayuga, .....	Auburn.
Jehiel H. Halsey, .....	Seneca, .....	Lodi.
<i>Eighth District.</i>		
Philo C. Fuller, .....	Livingston, .....	Geneseo.
Albert H. Tracy, .....	Erie, .....	Buffalo.
Trumbull Cary, .....	Genesee, .....	Batavia.
John Birdsall, .....	Chautauque, .....	Mayville.





**IN SENATE,**

**January 10, 1832.**

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**REPORT**

**Of the Attorney-General concerning the power of  
the Legislature over corporations; submitted in  
obedience to a resolution of the Senate.**

The Attorney-General, in obedience to the resolution of the Senate, requiring him to submit "An opinion on the legal effect of the provision in section eight, at page 600 of the first volume of the Revised Statutes, on acts of incorporation in cases where the acts themselves contain no such provision: and also an opinion on the legal effect of those provisions by which the Legislature reserves to itself the right to alter, modify or annul certain acts, in cases where such reservation is contained within the act,"

**RESPECTFULLY SUBMITS THE FOLLOWING OPINION.**

Title three of Chapter eighteen of the First Part of the Revised Statutes, relates to "the general powers, privileges and liabilities of corporations;" and is applicable in all its provisions to corporations subsequently created, though some of the sections do not extend to charters previously granted. One object of the Legislature in making this enactment, seems to have been to declare what powers and privileges might properly be exercised by every corporation, and under what restrictions and limitations, without the necessity of repeating those matters in every subsequent act of incorporation. And accordingly, the second section declares that the several powers enumerated in the first section, "shall vest in every corporation that shall hereafter be created, although they may not be specified in its charter, or in the act under which it shall be incorporated." And in many of the acts of incorporation which have been passed since the Revised Statutes went into operation, the

powers enumerated in the first section have been omitted, although some of them are essential to the very existence of a corporation.

Section eight, referred to in the resolution of the Senate, is in the following words: "The charter of every corporation that shall hereafter be granted by the Legislature, shall be subject to alteration, suspension and repeal, in the discretion of the Legislature." No reason is perceived why this should not apply to a subsequent grant, in which it is not expressly mentioned, as well as the provision conferring privileges not specifically contained in the charter. And the Attorney-General entertains no doubt that this section, (as well as the first and second,) is of the same force and effect in relation to all corporations which have since been created, as though it had been re-enacted in each particular charter: except in cases, (if any such exist,) where the act of incorporation has modified the general provision, either in express terms, or by necessary implication.

A similar case of a law containing general provisions applicable to corporations that might afterwards be created, will be found in the act relative to turnpike companies, passed in the year 1807, and which, with some modifications, has continued to the present time. (5 Web. Laws 50. 1 R. L. 1813, p. 228. 1 R. S. 577.) Since the passing of this act, charters for turnpike companies have usually contained little more than the names of the persons incorporated, a designation of the route of the road, the amount of capital stock, the names of the commissioners for receiving subscriptions, and the rate of tolls which the company might demand; while most of the general powers, privileges and duties of the corporation were only to be found in the general turnpike act. It is true that laws incorporating turnpike companies usually contain a clause giving to the corporation all the privileges, and subjecting them to all the conditions and restrictions contained in the general law: And the like remark is applicable to other corporations, created since the enactment of the Revised Statutes. Such a course may have been adopted by way of more abundant caution; or merely as a reference to those general provisions, without which the charter would be apparently imperfect. But it is believed that such a clause or reference is in no case necessary, and that without it, the corporation created would be entitled to all the powers and privileges, and be subject to all the limitations and restrictions, granted or contained in the general law.

II. The legal effect of reserving to the Legislature, in the charter, the right to alter, modify or annul the same, remains to be considered. This reservation has usually been made in the following form: "The Legislature may at any time alter, modify or repeal this act;" or in words of the like import. In such cases it cannot be questioned that the Legislature has the power, with no other limitation than its discretion, to take away all or any of the privileges granted, and to put an end to the corporation at pleasure. The provision in question cannot properly be considered a condition, and void on the ground that it is repugnant to the grant: but it operates by way of limitation, and determines the extent of the franchise. Thus, where corporate powers are granted for twenty years, with a reservation of the right to repeal the act, both provisions taken together amount to no more than this, that those powers may be exercised for twenty years, unless the Legislature shall sooner terminate the grant. And where certain privileges are given, and the power to alter is coupled with that to repeal, it only amounts to a grant of those privileges until the Legislature shall deem it proper to change, alter or take them away.

In this mode of considering the question, it is obvious that the repeal or alteration of an act creating a corporation, does not, in any proper sense of the terms, interfere with vested rights, nor impair the obligation of the contract between the State and the persons on whom the franchise was conferred: for charters of this description confer no rights but such as the corporators have consented to hold at the will of the Legislature, and the compact with them is but an agreement that they may use their privileges until they shall be recalled.

The right to resume the grant, where that power is reserved in the charter, has been admitted by several eminent jurists, and has been adjudged by the present Chancellor of this State: And it is believed that it has never been judicially questioned. And a precedent of high authority, and directly to the point, will be found in the Senate Journal of 1824, pages 537, 538, where that body, by a vote nearly unanimous, adopted a resolution in the following words: "Resolved, that by the reservation of the right to alter, modify or repeal, [a particular act mentioned in the resolution,] the Legislature have the power to alter, modify or repeal said act, (at their will and pleasure, without assigning any reasons therefor,) and that

the question of repealing is not a question as to right, but as to the expediency.”

The Senator who moved the resolution calling for this opinion, mentioned to the Attorney-General, that the power under consideration had been questioned in some legal opinions published in the newspapers the last year. In this he was mistaken. The opinions alluded to, were given upon a charter which did not reserve the power to repeal, but only those to alter, amend or modify. And the question discussed was, whether the power to alter, amend or modify, would extend so far, as to authorise the taking away of a material part of the privileges granted by the charter. That matter was examined by gentlemen of great eminence in the legal profession; and although they entertained different opinions upon the merits of that particular case, it was virtually conceded by all, that had the power to repeal been also reserved, the authority of the Legislature to take away the corporate privileges could not have been questioned.

Respectfully submitted,

GREENE C. BRONSON,

*Attorney-General,*

*Albany, Jan. 9, 1832,*

No. 9.

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**IN SENATE,**

**January 11, 1832.**

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**REPORT**

**Of the Attorney-General in relation to the payment of the salaries of the Bank Commissioners; submitted in obedience to a resolution of the Senate.**

The Attorney-General, in obedience to the resolution of the Senate, requiring him to report "his opinion whether the Comptroller is authorised by the act to create a fund for the benefit of the creditors of certain monied corporations, and for other purposes, passed the 2nd of April, 1829, to pay from the capital of said fund the salaries allowed by said act to the Bank Commissioners; the seventh section of which act provides, that the income arising from said fund, after deducting *thereout* the salaries of the Bank Commissioners, shall annually be paid by the Comptroller to the several corporations by which the said fund shall be created, in proportion to the amount which each of the said corporations shall have contributed thereto,"

**RESPECTFULLY SUBMITS THE FOLLOWING OPINION.**

The leading intention of the Legislature in passing the act referred to in the resolution of the Senate, was to provide a fund for the indemnity of the creditors of any insolvent bank, which should be equal in amount to three per centum upon the capital stock of

all the corporations subject to the provisions of the act. The capital of the fund, after the annual contributions to it had been completed, was not to be diminished, except for the specified purpose of paying the debts of a bankrupt institution : and what might be expended in that way, was to be reimbursed by further contributions. The salaries of the Commissioners were ultimately charged upon the income of the fund, and only what should remain of the income, "after deducting thereout," the amount paid to the Commissioners, was to be received by the corporations entitled to distribution.

It must have been well known that the Commissioners would enter upon their duties one year earlier than any payments would be made to the fund, and that a still longer period must elapse before there could be a sufficient accumulation of income to pay their salaries. It was therefore provided, by the twenty-sixth section, that the Commissioners should be paid "out of the Bank fund." And although this, for a year or two, would necessarily be a payment from the capital of the fund, the amount would in the end be reimbursed by the operation of the seventh section.

It was not the object of the seventh section to determine how the Commissioners should be paid, but to direct the distribution of the fund. And the words, "after deducting thereout the salaries of the Bank Commissioners," can be fully satisfied, by limiting the payments to the contributing banks, to such amount of income as shall remain after deducting the sums which may have been paid out of the capital for salaries. And thus the intention of the Legislature, as well in relation to the payment of the Commissioners, as the whole amount of the fund, will be carried into full effect.

This construction of the act leads to the following conclusions :

*First*, That the Comptroller is authorised to pay the salaries of the Commissioners from the capital, until the income of the fund shall be sufficient to meet those expenses ; and,

*Second*, That no part of the income should be distributed, until the sums thus drawn from the capital shall have been reimbursed.

No. 9.]

3

It may be proper to add, that a construction substantially the same, has been given to the act in the Comptroller's office.

Respectfully submitted,

GREENE C. BRONSON,

*Attorney-General.*

*Albany, Jan. 10, 1832.*



The first of these is the fact that the  
 government has been unable to  
 secure the necessary funds to  
 carry out its policy. This is due  
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 funds to carry out its policy.

**No. 10.**

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**IN SENATE,**

**January 7, 1832.**

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**REPORT**

**Of the Comptroller, in obedience to section ten, title one, chapter nine, of the first part of the Revised Statutes.**

**COMPTROLLER'S OFFICE, }**  
*Albany, 6th January, 1832. }*

**The Hon. EDWARD P. LIVINGSTON,**  
*President of the Senate.*

**SIR—**

Herewith I have the honor to transmit to the honorable the Senate, the report required from this office by section ten of title one of chapter nine of the first part of the Revised Statutes.

With great respect,

I am your obd't ser'vt.

**SILAS WRIGHT, JR.**



# REPORT.

COMPTROLLER'S OFFICE, }  
*Albany, January 6, 1832.* }

The Comptroller, in obedience to section ten, title one, chapter nine, of the first part of the Revised Statutes,

## RESPECTFULLY REPORTS :

That the names of the several persons employed as clerks in his office, at any time during the year 1831, with the period of time each person was so employed, and the amount of compensation paid to each for his services, are as follows, to wit :

Ebenezer Watson, the whole year, salary,...	\$800 00	
William Beatty, do do ...	750 00	
John Nugent, do do ...	600 00	
Homer B. Phelps, do do ...	700 00	
James Wilson, do do ...	600 00	
Louis De Witt, do do ...	500 00	
Charles Bryan, do do ...	500 00	
Isaiah L. Weaver, do do ...	200 00	
John W. Hyde, from 6th March to 1st July, at \$500 per year, .....	150 23	
		<u>\$4,800 23</u>

### *In the Canal Room.*

George W. Newell, the whole year, salary,...	\$500 00	
John T. Vernor, do do ..	500 00	
John Cuyler, do do ..	400 00	
Robert Rusk, do do ..	400 00	
In addition to which there was paid to Edward N. Tailor, a clerk in the Manhattan bank, in the city of New-York, for making the return of public stocks issued at the transfer office, pursuant to section nine of Chap. 320 of the laws of 1831, as extra clerk hire,.....	154 50	
		<u>2,034 50</u>

The whole payments for clerk hire for the year, amounting to, ..... \$6,843 73

The permanent appropriation for clerk hire for the Comptroller's office, is.....	\$6,000 00
In addition to this sum, there was appropriated by the 19th section of Chap. 320 of the laws of 1831,.....	2,000 00
	<hr/>
In all,..	\$8,000 00
Deduct the payments as above, .....	6,843 73
	<hr/>
And there will remain of the appropriations unexpended,	<u>\$1,156 27</u>

All the clerks above named, and who have been employed in the office during the year, with the exception of John W. Hyde, still remain at the salaries respectively set opposite to their names. The amount now payable, therefore, for existing salaries, if continued through the year, will exceed the permanent appropriation for that object by \$530. This shows that temporary provision will require to be made for the present year, as it has uniformly been for each year since the business of the canals so materially increased the labors of the office.

But two changes of salaries have taken place within the year, and those have increased the aggregate payments but \$70. The salary of one clerk which, last year, was \$150, has been raised to \$200; and the salary of another, which was \$480, has been increased to \$500. The Comptroller is not aware that it will be necessary to increase the number of clerks in his office during the present year, unless some further legislation should impose duties not now anticipated; but he does consider it proper and just to make a small addition to the salaries of two of the clerks employed in the canal room, as he believes their present compensation is below either the relative or actual value of their services; and should the Legislature provide the means without any expression unfavorable to this proposed change, it will be made.

As extra service also, for some purposes not now foreseen, may be required during the year, it may be more safe to make an additional appropriation, for clerk hire for the office, of one thousand dollars, the sum usually appropriated in past years; as the balance unexpended, if any, will remain in the treasury, while the fact of the appropriation will not be made to add to the necessary expenditure.

Respectfully submitted.

SILAS WRIGHT, Jr. *Comptroller.*

*Dated, Albany, 6th January, 1832.*

**No. 11.**

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**IN SENATE,**

**January 12, 1832.**

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**REPORT**

**Of the committee on roads and bridges, in relation  
to the Sodus Bay Bridge Company.**

The standing committee on roads and bridges, to whom was referred the petition of a number of the inhabitants of the towns of Sodus, Port-Bay and Woleott, in the county of Wayne, praying for the amendment and extension of the charter of the Sodus Bay bridge company,

**RESPECTFULLY REPORT:**

The petitioners represent, that on the ninth day of April, 1819, a company was incorporated with powers to erect and maintain a toll-bridge across Sodus Bay for the term of twenty years: that, in pursuance of the powers granted in the said act of incorporation, a bridge was erected in the year 1821; but that the plan of its construction was injudicious, and the work imperfectly executed. It is now in a weak and decayed state, and during the past summer the proprietors have incurred heavy expenses in making temporary repairs. The public safety and convenience call for a more durable and safe bridge, but the limited term of their charter which remains unexpired, does not afford sufficient inducements for an expenditure to the extent necessary for public benefit or individual advantage. It seems to have been the intention of the company to ask for amendments of their charter so as to extend their exclusive right of crossing the bay, beyond the limits now designated in their charter, and to reduce the number of directors, with some other variations from their present powers and privileges; but as these objects are not distinctly expressed in their notice, the committee has considered such amendments inadmissible.

In order that this subject may be more fully understood, it may not be improper to give the result of inquiries made by your committee. At or about the time the bridge was erected, Jonathan Melvin became the sole owner of all the company's interest in the bridge and the property connected with it. Melvin afterwards sold the same to his three sons; they transferred their rights to Isaac Gillet, now deceased—his interest in the bridge was sold by the order of the surrogate, as part of the estate of the said Isaac Gillet; and William Edwards, Elias Cooke and William Mudge, three of the petitioners, became the purchasers, and are now the only parties directly interested. It seems, that from the time when Jonathan Melvin became the owner of the bridge to the present date, all elections of directors and appointments of officers contemplated by the act, have been suspended.

In framing the bill accompanying this report, the committee have not intended to extend the powers or privileges of the present proprietors beyond those granted in the original charter; but as the effect of the long omission to exercise the rights vested in the company is not distinctly understood by your committee, they have thought it expedient, by an express provision, to authorise the present proprietors to resume and exercise all the rights originally intended.

The committee agree with the petitioners, that the unexpired term of the charter is too short to afford sufficient inducement to the proprietors to rebuild the bridge in the manner best calculated to secure the public safety and convenience, and at the same time promote the interest of the proprietors. The committee are therefore of opinion that the prayer for the extension of the charter, as to its duration, is reasonable and ought to be granted.

The committee have accordingly prepared a bill, and instructed their chairman to ask leave to introduce the same.

**No. 12.**

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**IN SENATE,**

**January 12, 1832.**

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**COMMUNICATION**

**Of the Surveyor-General in relation to the Public  
Lands.**

*To the President of the Senate.*

SIR—

There are some cases, relating to the public lands, which I consider it my duty respectfully to submit for the consideration of the Legislature.

In 1827, the Surveyor-General made a communication to the Honorable the Assembly, (see the Journal of that year, page 270,) stating that there was a tract of upwards of one thousand acres of land, belonging to the state, along Wood Creek, in the county of Oneida, the disposal of which had not been provided for by law. The committee to which this communication, together with a petition from sundry inhabitants residing on the land, was referred, reported a bill for the sale of it, (see page 864, of the same Journal,) but it does not appear that further proceedings were had in relation to it. The interest of the State seems to require that this property be sold. The pre-emptive right might be given, as has been done in similar instances, to the occupants, of farms of a limited extent, including their respective improvements, for such considerations as shall appear, from appraisements, to be the value of the soil in a state of nature.

At page 32, of the Appendix to the Journal of the Senate of 1829, is a statement of public lands in the St. Regis Reservation, still enjoyed by the original occupants, without yielding any emolument to the State. These lands it has been found impracticable to



sell, under existing laws. They continue in the same condition in which they were when the statement just mentioned was made.

In pursuance of the act, chap. 245, passed April 3, 1821, the lands reserved for military purposes, within the mile square, in the St. Regis Reservation, were leased for the term of ten years, which will expire next April. These lands consist of two parcels, containing together about sixty acres. They command the pass by water from Canada to the village of Fort Covington, and were fortified in the last war. The Commissioners appointed in pursuance of the act, chap. 194, passed April 20, 1818, considering that this ground might possibly at some future time be required for the same purpose, did not include it in the allotment of the mile square. It now remains with the Legislature to direct further proceeding in relation to this property.

I avail myself of this occasion to observe, that by the Revised Statutes, part 1, chap. 2, title 6, it is directed that, whenever a county or town is to be erected or altered, an authenticated survey of it shall be presented to the Legislature, and filed in the Surveyor-General's office. Since the passing of this act no map has been filed in conformity with its requirement, and unless it be enforced the Surveyor-General will not have it in his power fully to perform the duty enjoined on him by the 2d section of title 6, chap. 8, without resorting to the expensive process authorised by the next succeeding section. Instances frequently occur, in which the bounds of towns cannot be delineated on the map of the State from the mere description given by the acts of the Legislature.

I have the honor to be,

Most respectfully,

Your obedient humble servt.

SIMEON DE WITT, *Surv. Gen.*

*The President of the Senate.*

January 12, 1832,

**No. 13.**

**IN SENATE,**

**January 13, 1832.**

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**REPORT**

**Of the Superintendent and Inspector of the Onondaga Salt Springs.**

**SUPERINTENDENT'S OFFICE, }**  
***Salina, January 10, 1832.* }**

**The Hon. EDWARD P. LIVINGSTON,**  
***President of the Senate.***

**SIR—**

**I have the honor herewith to transmit to the Honorable the Senate the annual report required from this office.**

**With great respect,**

**I am your obedient servant,**

**NEHEMIAH H. EARLL.**



# REPORT, &c.

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*To the Honorable the Legislature of the State of New-York :*

In obedience to the sixteenth section of Chapter ninth, Title tenth of part first of the Revised Statutes, the undersigned, the Superintendent and Inspector of the Onondaga Salt Springs, do

**RESPECTFULLY REPORT :**

That during the year 1831, there has been 1,514,037 bushels of salt inspected in the town of Salina, one hundred and eighty-nine thousand bushels of which is coarse salt ; of the last mentioned quantity one hundred and sixty-three thousand and four bushels were made by solar heat, and the residue by artificial heat and solar heat combined.

That the number of manufactories of salt by artificial heat in the said town of Salina is one hundred and thirty-five, containing three thousand and seventy-six kettles, four pans, and one cylinder, with 18,794 superficial feet of vats attached thereto.

That the manufactories making salt by solar heat or evaporation, are the Onondaga Salt Company, the Syracuse Salt Company, and Henry Gifford's works, all consisting of one million three hundred and three thousand and twenty-four superficial feet of vats.

The following table will exhibit the number of bushels of salt manufactured at each of the manufacturing villages from the 21st of April last to the 1st of January instant, the number of manufactories, (except those by solar evaporation,) the number of kettles and pans, also the number of gallons the kettles and pans contain, and the whole number of days all the manufactories have been in operation.

*The average time, and average product per day of each of the Manufactories.*

Names of Villages.	No of manufactories.	No. of kettles.	No. of pans.	No. of gallons.	Whole No. of days in operation.	Average time each manufactory is in operation	No. of bu's manufactured.	No. of lbs.	Average product of each manufactory per day, while in operation—bushels
Salina, . . .	80	1,880	2	175,775	9,786	125	832,930	31	85
Syracuse, .	16	306	..	28,230	1,019	63½	73,708	16	73
Liverpool,	25	482	..	42,870	2,873	113½	202,866	34	71½
Geddes, ..	14	408	2	48,370	1,441	103	170,600	38	118
	135	3,076	4	295,445	15,083	113	1,279,805	7	84
By solar evaporation, 161,753									

From the foregoing table it is shewn that the present manufactories, in four months, or one hundred and thirteen days, the actual time each block or manufactory averages, being in operation since the 21st day of April last, are capable of producing 1,441,559 bushels of salt.

The reason for the difference in the products of the manufactories at the respective villages in a given time will be more readily perceived by a reference to the table below, exhibiting the mean capacity of the manufactories at each village in gallons, with the average product per day, to wit :

Salina, . . .	2,253	gallons.	Average product per day,	85	bushels
Syracuse, .	1,764	do	do	73	do
Liverpool, .	1,714	do	do	71½	do
Geddes, . .	3,469	do	do	118	do

A compliance with the 130th, 131st, and 132d sections of the before-mentioned statutes, has enabled the undersigned to furnish the foregoing tables. The accounts so kept show each manufactory to have exceeded in duties received, the amount of the tax charged upon the kettles. So far therefore, as the 130th section imposes a daily tax or charge on the kettles, it is a failure.

However, with a view to prevent frauds, it is believed that a faithful attention to what is there required in keeping an account of the daily operation of each manufactory, (after having ascertained the number of kettles, and number of gallons each will contain,) and the quantity of salt inspected from each, will detect frauds of magnitude, and does much in aiding the officers having charge of the in-

spection and care of the revenue, in preventing the evasion of the payment of the duties, and also does enable them to enforce the provisions in the 87th section of the said statutes more understandingly. The public works or pumps are now in good repair at the village of Salina. The pump at Geddes, will, in the course of the present year, require considerable repairs. The disbursements as audited by the present inspector, and expended by the present superintendent, embracing the months of March last, &c. to the first of January instant, amount to \$7,250.22.

The amount collected and now collecting, for raising salt water during the year, is \$2,724.87, leaving a balance against the engineer department of \$4,525.35.

Extraordinary expenses have been incurred within the past year in consequence of re-building the water-wheel of the great pump at the village of Salina, (which work was commenced under the direction of the late superintendent) and a new arrangement of the pumps and gearing by which the machinery is simplified, and the whole work much more substantial and less liable to accident and interruption in its operations, and in finishing and embanking the wells of salt water at the village of Salina, and also in sinking a well at the village of Geddes, and laying a new string of logs at that place to conduct the fresh water from the canal to the water-wheel: and lastly, in the purchase of the establishment used to raise water for the village of Liverpool.

The present public works for raising salt water consist of seven erections, four of which were calculated to go by water power and three by steam.

The only pumps now in use are three propelled by water power, two of which are located at the village of Salina, and the other at the village of Geddes. These, it is believed, are capable of furnishing a full supply of brine to all the manufactories on the reservation, and have done so since the first of October last, previous to which time we took possession of the Liverpool pump, and at that time commenced raising salt water for the manufactories at Liverpool, so that the pumping duty for the last quarter is now collecting on all the salt made on the reservation; and thus the desirable object of placing all the manufacturers on an equal footing as to quality and supply, is accomplished without any further additional expense to the State. The small steam pump lately purchased of the Liverpool

1. The first part of the document is a list of the names of the persons who have been appointed to the various offices of the government.

No. 14.

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IN SENATE,

January 12, 1832.

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REPORT

Of the Inspectors of the Mount-Pleasant State-Prison.

*To the Honorable the Legislature of the State of New-York.*

The Inspectors of the Mount-Pleasant State-Prison

RESPECTFULLY REPORT—

That, from the first day of November, 1830, to the 30th day of September, 1831, including a period of eleven months, the agent of this prison, Robert Wiltse, Esquire, received for its use \$75,701 17 Of which there has been expended, during the same period, and for the use and benefit of the prison, the sum of,..... 72,394 71

Leaving thus, a balance in the hands of the agent, on the 30th day of September, 1831, of..... \$3,366 46 All of which is more fully detailed in schedule C, accompanying this report.

By this schedule it will also be seen, that the sales from the labor of the convicts, during the same period, amount to \$40,011.93; from which, after deducting \$1,473, the cost of the *purchased* material, (iron, &c.) included in these sales, there will remain \$38,538.93, the actual amount *produced*.

In the construction of the 200 additional cells, authorised by the act of April 20th, 1830, it was deemed advisable to erect them, by raising another story upon the prison. This location, while it appeared to conform more suitably to the original plan of the prison, increased the expense of the cells, by requiring additional time and



labor, to carry up the heavy materials made use of, and by rendering it necessary to unroof and roof the whole building. These cells, the erection of which had been retarded for the want of sufficient funds, are now completed; and, on reference to the schedule above mentioned, it will be seen that for the materials *purchased* for this object, during the past year, \$6,235.12 have been expended, whilst the sum appropriated for the same purpose, and drawn from the treasury, was \$1,800 only, being an excess of expenditure over such appropriation of \$1,435.12, which has been supplied from other funds of the prison. The prison is now five stories high and contains 1000 cells.

Besides the building of these cells, there have been erected, during the past year, one wing of a substantial and permanent stone shop, 156 feet long by 36 wide, in the front yard; a fire-proof powder magazine in the rear of the prison; and last winter, at the time of the alarm of small-pox, a building of wood for a hospital, at a sufficient distance from the prison, 60 feet long by 20 feet wide, to be in readiness against the introduction or appearance of that or any other contagious and alarming disease.

The kitchen, wash-room and store-room, originally intended for the accommodation of 800 men, have been necessarily enlarged, to meet the wants occasioned by an increased number of convicts.

The quarries at this prison have been extended; and a new one has been opened at the south part of the farm, at some distance from the prison, and a road worked to it; but the value of this, as well as of the other quarries, is diminished, by the immense amount of labor necessary to remove the superincumbent earth and rubbish, and by the excess of inferior stone over the marble of a good quality. These causes, it is feared will continue, as heretofore, to lessen the productiveness which might at first have been expected from the quarries of this prison.

The fulfilment of some of the old contracts, requiring stone of a very *large* size, has been delayed for the want of *such* stone; but it is believed that these contracts may be completed early in the ensuing season.

The paper annexed, marked D, is an inventory of the property of the Mount-Pleasant State-Prison, on the 30th day of September, 1831.

The number of convicts in this prison on the 31st day of October, 1830, was,.....	770
From that time to the 30th day of September, 1831, (eleven months,) there have been received, (table E, annexed,).....	338
	<hr/> 1,108
There have been discharged, during the same period, by expiration of sentence, (vide table F,).....	65
By death, (table G,).....	28
And by pardon, (table H,).....	34
And in attempting to escape there has been drowned, (table G,).....	1
	<hr/> 128
Leaving in prison, September 30th, 1831,.....	980
Convicts, making an increase of 210 during the eleven months previous.	

Since the 30th day of September last, (to which time the previous calculations are made, with a view to correspond with the closing of the accounts, as required by law,) the number of convicts at this prison has exceeded 1,000, but on the 17th day of November, 60 were removed to the Auburn prison, by order of the Governor. The number here, at the date of this report, is upwards of 980; and, at the ratio of increase for the last year or two, if this prison shall continue to receive convicts from the same portion of the State as is at present assigned to it, it may fairly be estimated that before the close of the current year, (ending on the 30th day of September next,) the number will not fall short of 1,200. In such case, provision should immediately be made for enlarging our prison, if, however, it shall be found convenient, for the present, to add to the Auburn prison, and set off to it a larger district, the banks of earth and rocks adjoining this prison will gradually be removed by the working of the quarries, and thus in enlarging it at a future day no inconsiderable expense will be saved. But whether this or the Auburn prison, or both, shall be enlarged is submitted to the wisdom of the Legislature, with the single observation, that our system of discipline absolutely requires that each convict should be locked up in a cell separate from the rest. Besides entirely interfering with the peculiar discipline of the prison, there are other and very serious objections against confining in so small a space, two criminals, perhaps of the most degraded and profligate character.

Some time is required to instruct the convicts in the various kinds of labor in use at this prison. Their rapid increase is, therefore, unfavorable to immediate usefulness, whilst the value of their services is limited by the shorter periods of punishment, to which many of them are now sentenced.

It may be well perhaps to remark, that this rapid increase of convicts, in our State prisons, is mainly attributable to two principal causes; the additional number of crimes, for which this punishment is now inflicted, and the very salutary caution, with which the pardoning power has latterly been exercised.

In the opinion of the Inspectors, the exercise of this power should be reserved solely for *extraordinary* cases. And, relation to the punishment of the State prison, they will express the further opinion; that, on the first conviction of a criminal, his term of sentence should be short; on a second conviction, it should be perhaps rigorous; but, on a third conviction, as the prospect of reformation must then be hopeless, the public good would be best subserved by confinement for life.

The annexed paper, marked I, exhibits the actual employment of the prisoners on the 30th day of September, 1831; which, though frequently varying with the constantly varying number in confinement, may be considered a fair average of the occupation of the convicts for the year preceding. By this it will be seen that the number on that day occupied in the preparation and manufacture of stone and other goods for sale, was 590; and 390 were employed in the support and for the purposes of the prison.

The report of the physician, (document A,) will exhibit the state of the hospital, and the health of the institution during the past year.

The report of the chaplain, (document B,) will shew the moral condition of the prison. In addition to his religious duties, he has introduced a Sunday school into the prison, and it may be hoped that the means of instruction, thus afforded to the unhappy inmates, may not be without important and lasting benefit to them.

By the schedule annexed, marked K, which is an estimate of the probable expenditures of this prison for the current year, it will be seen that the whole expense is estimated at \$77,634.88, of which sum it is believed that \$48,000 may be realized from the labor of the convicts, thus leaving \$29,634.88 to be supplied by an appro-

priation from the treasury. The appropriation of this sum the Inspectors, (with the advice of the agent,) believe to be necessary for the support of the prison.

Besides the agent and deputy keeper, 23 assistant keepers, (the full number allowed by law,) and 26 guards, (two guards more than the law authorises,) are in constant and active employment at this prison. As the exigencies of the prison have already made it necessary to employ two guards, in addition to the number authorised, and as the public good may require a further increase, both of the assistant keepers and guards, we would recommend the passage of a law, authorising an increase of the keepers to 26, and of the guards to 30, at such times as the Inspectors may deem such increase necessary.

The paper marked L, is a list of the female convicts belonging to this prison, who were confined at Bellevue, in the care of the corporation of the city of New-York, on the 20th day of November, 1831. On the 20th day of November, 1830, the number of these was 38. During the year 6 have been discharged by expiration of sentence, 5 by pardon, and 2 have died, in all 13; and there have been added 24, making thus in confinement, on the 20th day of November last, 49.

In our last year's report we invited the attention of the Legislature to the situation of the female convicts of this State, and the propriety of erecting a separate prison for them, in the hope that they too might receive the benefit of some improved mode of prison discipline. The Inspectors of the Auburn prison have also frequently urged this subject, and our predecessors at this prison, in their last report, submitted estimates of the expense of erecting such a prison, as well as sites for its location. We will add that a convenient location for this object may be found upon the State prison farm, about a quarter of a mile north of this prison, towards the village of Sing-Sing; and that, in the opinion of our agent, such a building, (with the appurtenances,) as is proposed, in the report last above alluded to, can be erected by the convicts of this prison, within the estimates of said report. We are also informed that a wing of the Auburn prison, at present unoccupied, might still more cheaply and readily be converted into a prison sufficiently large for all the female convicts of this State.

We do not suppose it probable that these convicts can be profitably employed. Without having attempted any estimates, we presume the expense of a separate prison for the females may fully equal that of their present support. But can not their condition be ameliorated? This is the question of philanthropy; and surely no means should be spared, which hold out the remotest prospect of improving their present state.

We will speak but of one more subject, the discipline of this institution. The vigour and perfection of its government do not appear to be generally known. Here are nearly 1000 convicts, from the lowest villain, the very poltroon of infamy, to the hardened desperado, whose hands are perhaps stained with blood, and whose whole previous life had been a continued course of crime and of terror. Of all this number, during the hours of labor, not one is confined by wall, or lock or bolt, or restrained in limb, by fetter or shackle; but spread out into different sections, some are employed at the distance of more than a quarter of a mile from the prison. What then keeps them in subjection? Scarcely the thirteen guards, for no greater number are on duty at one time. No, by the mere force of discipline, at the will of their keepers, they are tamed into submission, usefully employed, and moved with the facility of finished mechanism.

In conclusion, the agent and officers of this prison are believed to be faithfully and zealously engaged in promoting its welfare and success. In their fidelity the Inspectors have the most entire confidence, and would commend them to the confidence and support of the community.

All which is respectfully submitted.

PIERRE VAN CORTLANDT,  
ALLAN MACDONALD,  
JOHN FISHER.

INSPECTORS' OFFICE,  
Mount-Pleasant State Prison, }  
December 16, 1831.



## DOCUMENTS

### Accompanying the Report of the Inspectors of the Mount-Pleasant State Prison.

(A.)

#### PHYSICIAN'S REPORT.

*Mount-Pleasant State Prison, Sept. 30th, 1831.*

In reporting to the Inspectors the state of health in this prison for the past year, I have little to say in addition to my report of the preceding year, the diseases having been, for the most part, of the same general character; none having occurred which could be imputed exclusively to local causes, or be considered peculiar to prison discipline.

In the month of December some convicts were brought from New-York to this prison, with the small pox; by separating the sick from the well, by vaccination, &c. the progress of the disease was effectually stopped. In no instance did it prove fatal.

It is, I presume, well known to the Inspectors, that a very large proportion of the convicts are brought to this prison from the city of New-York; the greater part of those are found to be diseased at the time of their reception; many of them with diseases in that protracted state which renders a permanent cure impossible, and very many with constitutions materially impaired, the effect perhaps of long confinement in other prisons, and of their former intemperate and dissolute course of life. Those persons are peculiarly susceptible of disease, and frequently fall victims to those diseases, from which individuals of sound constitutions would almost invariably recover; it is this class of men, and the city convicts, which form the principal part of the hospital cases.

The average proportion of sick for the last year has been about 3 per cent. Twenty-seven have died from disease, 14 of whom were very materially diseased at the time of admission. Casualty 1. Total 28. Viz:

*James Gibson*, received in May, 1828; had been sick a long time when received; disease scrofula; died Nov. 11th, aged 35.

*Hanable Cromwell*, sentenced Oct. 1830; disease consumption; died Nov. 27th, aged 23.

*Thomas Pumphry*, sentenced Sept. 21st, 1829; disease spasmodic cholera; died Nov. 1st, aged 31.

*Loyd Langdon*, sentenced in May, 1830; disease consumption; was in bad health when received into prison; died January 13th, aged 22.

*Henry Sampson*, sentenced March 15th, 1830; disease consumption, by which he was much reduced when received; died January 4th, aged 20.

*William Treadles*, sentenced Nov. 25th 1828; received in the incipient stage of consumption; died Jan. 7th, aged 25.

*Richard Dewitt*, sentenced June 19th, 1830 ; had been sick, by his own account, for the last 10 months ; disease dropsy ; died March 25th, aged 42.

*Robert Lent*, sentenced July 19th, 1830 ; disease dropsy ; died March 26th, aged 21.

*William Speirs*, sentenced Nov. 14th, 1827 ; disease apoplexy ; died April 9th, aged 29.

*Peter Holman*, sentenced June 1st, 1830 ; disease consumption ; died April 28th, aged 33.

*David Welch*, sentenced March 5th, 1824 ; disease consumption ; died April 26th, aged 30.

*Silas Chubb*, sentenced Sept. 7th, 1830 ; had been excessively intemperate ; died from diseased liver, April 25th, aged 39.

*George Baily*, sentenced 14th Jan. 1828 ; disease dropsy of the chest ; died April 10th, aged 21.

*Jos. Houston*, sentenced 19th March, 1831 ; was in bad health when received ; disease mortification from accidental injury ; died April 21st, aged 23.

*John Brown*, sentenced 15th Feb. 1830 ; had been a long time in the penitentiary, and for many years diseased with scrofula ; died May 29th, aged 37.

*Abel Baldwin*, sentenced Dec. 23d, 1830 ; was in the advanced stage of consumption when received ; died May 20th, aged 43.

*Charles A. Rider*, sentenced Jan. 15th 1831 ; disease consumption ; died July 17th, aged 30.

*John Sawyer*, sentenced January 29th, 1831 ; was in the last stage of consumption when received ; died July 5th, aged 30.

*John Morris*, sentenced 20th Sept. 1830 ; was sick when received ; disease dropsy ; died July 22d, aged 14.

*William Williams*, sentenced Oct. 6th, 1829 ; was very infirm when received ; had labored under a scrofulous disease for several years ; died July 12th, aged 16.

*William Gilmore*, sentenced April 19th, 1828 ; disease jaundice ; died July 27th, aged 53.

*Henry Plew*, sentenced March 22d, 1830 ; sick when received ; died from diseased liver, Aug. 24th, aged 22.

*Emmons Lilly*, sentenced March 7th, 1830 ; disease dysentery ; died Aug. 2d, aged 30.

*Josiah Hager*, sentenced Oct. 16th, 1830 ; was much reduced by previous disease and confinement when received ; disease chronic dysentery ; died Sept. 27th, aged 58.

*John Scott*, sentenced Dec. 21st, 1829 ; was sick when received ; disease dropsy ; died Sept. 27th, aged 26.

*Bristol Bennett*, sentenced March 15th, 1830 ; disease typhus fever ; died Sept. 24th, aged 22.

*John Freeman*, sentenced July 16th, 1831 ; disease dropsy ; died Sept. 8th, aged 18.

*Joseph Gannon*, killed by the falling of a stone in the quarry, August 12.

A. KISSAM HOFFMAN,  
Visiting Physician.

(B.)

*To the Inspectors of State Prison at Sing-Sing :*

GENTLEMEN,

In speaking of the moral state of the prison, I can not but humbly and gratefully acknowledge the condescending goodness of Almighty God, in regarding us in our *truly low estate*.

During the past year the power of divine truth has evidently seized the minds and consciences of not a few, *in a signal manner*, and made them to tremble, in view of obligations which they never before realized, and to feel as *convicts before God ; condemned at the bar of Infinite Justice*. In cases of this kind the attention has not only been called up to the particular crime for which they stand convicted, but perhaps to a thousand of equal, and some of greater guilt—the *whole life* is brought up in array before the mind. It may readily be conceived that here is presented an overwhelming scene as matter for repentance, and much to be forgiven. Yet it must be remembered that cases of this kind are comparatively few. *Would that they were more numerous*. Yet I would not attempt to specify or limit the number. It is worthy of remark that not one of this hopeful number, in all my intercourse with them, has ever given the most remote intimation of a desire to be released from present punishment ; nor am I aware that one has been released in consequence of any religious professions. Two or three of this class have left, one of whom I have heard of since, who, immediately on returning home, made application to unite with the church—*was* received—and has since maintained a consistent deportment. But I can not particularize, neither can I judge with certainty. I submit it to Him who alone is the searcher of the heart, and let time be the test of the sincerity and reality of all religious professions.

In regard to the prison generally, there is the strongest evidence to believe that there is *much reading of the scriptures*. This has been a subject of frequent remark by the keepers. Though this may be done in the outset, in very many instances, from motives unworthy of this sacred book, yet when found habitually engaged in this divinely appointed means, we may hope for the most favorable results. *It is the "sword of the Spirit."* The best proof of this general attention is the accurate and extensive knowledge which is so generally evinced : and the amount of scripture committed to memory, in very many instances, is almost incredible.

Our Sunday school has been in successful operation for about a year past. It has enlisted the attention and faithful services of several gentlemen of the village. The agent and officers of prison *in the general*, have shewn an interest in its prosperity ; some of whom have been actively employed in teaching. The school consists of from sixty to eighty men, who were unable to read ; and a large proportion of whom were unable to repeat the alphabet. The greatest eagerness has been manifested on their part to learn, and their proficiency has been accordingly. Now, instead of the bible remaining closed from year to year, and an almost entire ignorance





Sept. 1831.

*f Sentence.*

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.....	113
months,	3
.....	81
.....	14
.....	83
.....	3
.....	4
.....	1
.....	31
.....	1
.....	1
.....	3
	<hr/>
	338
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[S. No. 14.]



Sept. 1831.

*f Sentence.*

.....	113
months,	3
.....	81
.....	14
.....	83
.....	3
.....	4
.....	1
.....	31
.....	1
.....	1
.....	3
	<hr/>
	338
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[S. No. 14.]

Admission to

Prison

John A. Smith	1870	Admitted to prison for a term of 10 years for a crime committed in 1868.
John A. Smith	1871	Admitted to prison for a term of 10 years for a crime committed in 1869.
John A. Smith	1872	Admitted to prison for a term of 10 years for a crime committed in 1870.
John A. Smith	1873	Admitted to prison for a term of 10 years for a crime committed in 1871.
John A. Smith	1874	Admitted to prison for a term of 10 years for a crime committed in 1872.
John A. Smith	1875	Admitted to prison for a term of 10 years for a crime committed in 1873.
John A. Smith	1876	Admitted to prison for a term of 10 years for a crime committed in 1874.
John A. Smith	1877	Admitted to prison for a term of 10 years for a crime committed in 1875.
John A. Smith	1878	Admitted to prison for a term of 10 years for a crime committed in 1876.
John A. Smith	1879	Admitted to prison for a term of 10 years for a crime committed in 1877.
John A. Smith	1880	Admitted to prison for a term of 10 years for a crime committed in 1878.
John A. Smith	1881	Admitted to prison for a term of 10 years for a crime committed in 1879.
John A. Smith	1882	Admitted to prison for a term of 10 years for a crime committed in 1880.
John A. Smith	1883	Admitted to prison for a term of 10 years for a crime committed in 1881.
John A. Smith	1884	Admitted to prison for a term of 10 years for a crime committed in 1882.
John A. Smith	1885	Admitted to prison for a term of 10 years for a crime committed in 1883.
John A. Smith	1886	Admitted to prison for a term of 10 years for a crime committed in 1884.
John A. Smith	1887	Admitted to prison for a term of 10 years for a crime committed in 1885.
John A. Smith	1888	Admitted to prison for a term of 10 years for a crime committed in 1886.
John A. Smith	1889	Admitted to prison for a term of 10 years for a crime committed in 1887.
John A. Smith	1890	Admitted to prison for a term of 10 years for a crime committed in 1888.
John A. Smith	1891	Admitted to prison for a term of 10 years for a crime committed in 1889.
John A. Smith	1892	Admitted to prison for a term of 10 years for a crime committed in 1890.
John A. Smith	1893	Admitted to prison for a term of 10 years for a crime committed in 1891.
John A. Smith	1894	Admitted to prison for a term of 10 years for a crime committed in 1892.
John A. Smith	1895	Admitted to prison for a term of 10 years for a crime committed in 1893.
John A. Smith	1896	Admitted to prison for a term of 10 years for a crime committed in 1894.
John A. Smith	1897	Admitted to prison for a term of 10 years for a crime committed in 1895.
John A. Smith	1898	Admitted to prison for a term of 10 years for a crime committed in 1896.
John A. Smith	1899	Admitted to prison for a term of 10 years for a crime committed in 1897.
John A. Smith	1900	Admitted to prison for a term of 10 years for a crime committed in 1898.

( F. )

## LIST OF CONVICTS,

<i>Discharged from State Prison at Sing-Sing by expiration of sentence, from the 31st of Oct. 1830,</i>				
Sahler, Samuel .....	Petit larceny, 2d offence, .....	3 do	April 23, do	April 23, 1828.
Shepherd, Giles .....	Counterfeit money, .....	7 do	June 19, do	June 19, 1824.
Shaw, Nathaniel .....	Grand larceny, .....	3 do	1 day, Sept. 13, do	Sept. 12, 1828.
Skinner, Joseph .....	Perjury, .....	7 do	do 26, do	do 28, 1824.
Turner, John .....	Grand larceny, .....	3 do	1 day, Dec. 16, 1830,	Dec. 15, 1827.
Toles, Lewis .....	Forgery, .....	7 do	do 16, do	do 16, 1823.
Tredwell, George .....	Grand larceny, .....	3 do	1 day, April 20, 1831,	Aug. 19, 1828.
Trevannon, William .....	do do .....	3 do	do July 20, do	July 19, do
Tyson, William .....	do do .....	3 do	do Aug. 16, do	Aug. 15, do
Thompson, George .....	do do .....	3 do	do Sept. 10, do	Sept. 9, do
Vadda, John .....	do do .....	7 do	do Feb. 17, do	Feb. 17, 1824.
Vance, Samuel .....	do do .....	4 do	do April 17, do	April 17, 1827.
Valentine, James .....	do do .....	5 do	do Aug. 19, do	Aug. 19, 1826.
Willis, Nester .....	do do .....	3 do	do Dec. 6, 1830,	Dec. 6, 1827.
Williams, Charles .....	Petit larceny, 2d offence, .....	3 do	1 day, do 9, do	do 8, do
Whaley, Daniel .....	Perjury, .....	8 do	do Feb. 20, 1831,	Feb. 20, 1825.
Williams, John .....	Grand larceny, .....	3 do	1 day, May 18, do	May 17, 1828.
Woodworth, Exodus .....	do do .....	5 do	do June 1, do	June 1, 1826.
Woodbeck, Thos. ....	Assault and battery, to rape, .....	7 do	do 12, do	do 12, 1824.
Winter, Daniel .....	Forgery, .....	3 do	1 day, do 16, do	do 15, 1828.
Wilson, William .....	Petit larceny, 2d offence, .....	3 do	do July 4, do	July 3, do
Woodruff, William .....	Grand larceny, .....	3 do	do Aug. 16, do	Aug. 15, do

[S. No. 14.]



ie 30th of Sept. 1831,

<i>When died.</i>	<i>Remarks.</i>
April 10, 1831.	
May 21, do	
Sept. 24, do	
April 25, do	
Nov. 27, 1830.	
Mar. 25, 1831.	
Sept. 7, do	
Nov. 11, 1830,	
July 27, 1831,	
Aug. 12, do	
April 21, do	
do 28, do	
Sept. 26, do	
Jan. 13, do	
Mar. 31, do	
Aug. 2, do	
July 22, do	
Nov. 1, 1830.	
Aug. 23, 1831.	
July 16, do	
Jan. 4, do	
Feb. 21, do	Drowned in attempt to escape.
April 9, do	
May 29, do	
July 6, do	
Sept. 26, do	
Feb. 7, do	
April 26, do	
July 12, do	

[S. No. 14.]





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Co  
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Dec. 1830.  
May, 1831,  
do do  
July, do  
Nov. 1830.  
Dec. do  
Feb. 1831.  
May, do  
June, do  
Dec. 1830.  
June, 1831.  
Dec. 1830.  
Feb 1831.  
May, do  
July, do  
Dec. do  
May, do  
do do  
Dec. do  
do do  
do do  
do do  
Jan. do  
Mar. do  
Apr. do  
May, do  
June, do  
Sept. do  
Aug. do  
Mar. do  
Apr. do  
May, do  
do do  
do do  
do do  
Ne do  
Da, pril, do  
day, do



## (I.)

*Occupation of Convicts.**Occupation of prisoners, on work for sale.*

Shoe makers, .....	35
Tailors, .....	10
Lock smiths and iron workers, .....	32
Stone cutters, .....	295
Shop tenders and waiters, .....	31
Quarrying and cutting rail way blocks, .....	39
Quarrymen in south quarry, .....	37
"    north    "    .....	47
Carting stone from    "    .....	36
Pounding rail way stone, .....	12
Laborers loading vessels, .....	16
<b>Total, .....</b>	<b>590</b>

*For the prison,*

Quarrying.—Cutting stone for prison buildings, .....	111
Carting    "    "    .....	20
Barrowmen, .....	36
Masons, .....	24
Carpenters, .....	12
Hod carriers, waiters and tenders, .....	16
In smith shop at doors, &c. ....	37
Tailors and shoemakers, .....	25
Weavers, spinners and carders, .....	22
Invalids picking wool, .....	28
Cooks, bakers and washers, .....	24
Barbers, .....	5
Waiters in hall, .....	11
Sick in Hospital, .....	13
Ox drivers, .....	2
Hospital nurse and waiters, .....	2
Coopers, .....	2
<b>Total number of prisoners, ....</b>	<b>980</b>

R. WILTSE, *Agent*,*September 30, 1831.*

(K.)

## ESTIMATE OF EXPENDITURES FOR 1832.

*Estimate of the probable expense of Mount-Pleasant State Prison for one year, allowing an average of 1,100 prisoners.*

Rations for 1,100 convicts 365 days, 401,500, 6½ cents,	\$26,097 50
Support of female convicts in New-York, average number 55, at \$100 per year,.....	5,500 00
Salary of agent and keeper,.....	1,750 00
do deputy keeper.....	1,000 00
do clerk,.....	800 00
do physician,.....	500 00
do chaplain,.....	450 00
do 25 assistant keepers, \$550 each,.....	13,750 00
do 28 guards \$300 each,.....	8,400 00
7,322 lbs. wool for clothing, 50 cts. per lb.....	3,661 00
7,370 " cotton yarn 25 do .....	1,837 50
1,650 pair shoes, \$1 00 .....	1,650 00
272 lbs. sewing thread, 87½ per lb.....	260 63
1,100 blankets, 1 62½ .....	1,787 50
200 bibles, 70 .....	140 00
60 doz. buckskin mittens, 4 50 .....	270 00
400 tons coal, 6 00 .....	2,400 00
5 tons Eng. iron, for repairs, carts, trucks, wheel-barrows, &c. &c.....	400 00
2 tons cast-steel, for drills, axes, hammers and pecks,	800 00
320 casks powder, \$4 00,.....	1,280 00
400 lbs. refined borax, 25,.....	100 00
750 fire brick, 6 00,.....	45 00
950 galls. sperm oil, 90,.....	855 00
Hospital stores and medicines,.....	750 00
Discharged convicts,.....	260 00
Freights and cartage,.....	650 00
Stationary, postage, and incidental charges,.....	230 00
3,000 feet oak timber for repairs,.....	90 00
500 " boards do .....	60 00

*Materials for Buildings, Dock, &c.*

21,000 feet of timber, \$2 00 .....	420 00
260 bunches shingles, 2 25 .....	585 00
2,000 boards, .....	250 00
300 plank, 25,.....	75 00
1200 lbs. nails, 7,.....	84 00
25 boxes glass, 2 75,.....	67 75
60 lbs. putty, 10,.....	6 00
500 lbs. lead, 8,.....	40 00
80 cords wood for burning lime,.....	320 00

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**\$77,634 88**

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As the amount to be realized from the labor of the convicts depends in a great measure on the quality and quantity of stone that our quarries will produce, it is difficult to arrive at the probable earnings for the next year with any degree of certainty. Judging from present prospects, I am induced to believe that our receipts for labor may amount to 48,000 dollars, which, if realized, will leave a deficiency of \$29,634.88, for which an appropriation will be required.

ROBT WILTSE, *Agent*.



( L. )

E STATE

orporation o

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*Sentence.*

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Life,.....  
4 years,.....  
7 do .....  
5 do .....





**No. 15.**

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**IN SENATE,**

**January 7, 1832.**

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**REPORT**

**Of the Comptroller on the petition of John and Matthew Pratt, praying for the payment to them of certain surplus moneys in the treasury, obtained on the sale of certain land, referred to him by the Hon. the Senate.**

**COMPTROLLER'S OFFICE, }**  
*Albany, 7 January, 1832. }*

The Comptroller, to whom was referred, by the Honorable the Senate, the petition of John Pratt and Matthew Pratt, praying for the passage of a law, directing the payment out of the treasury to them of the surplus money obtained upon the re-sale by the Surveyor-General, for the non-payment of interest, of twenty-five acres of land, being the west part of lot No. 44, in the East Hill Tract, New-Stockbridge,

**RESPECTFULLY REPORTS :**

That the facts in relation to both the original and the re-sale of this piece of land, as shown by the books of this and the Surveyor-General's office, are as follows : On the 20th day of May, 1824, the original sale was made to David Manchester for \$112.50, of which sum \$14.50 were paid, and a bond was given for the residue of the purchase money, \$98, upon the receipt of which bond the certificate of the Surveyor-General referred with the petition was issued and delivered to Manchester.

From this time to the 7th June, 1830, no payment of either interest or principle was made upon the account for this land by any person, and on that day, pursuant to previous notice for that purpose, the re-sale took place for arrears of interest and principal due

amounting, as shown by the list of sales, to \$146.55, the costs of the sale being included. Orasmus Pratt was the purchaser for the sum of \$225, that being the highest sum bid for the lot. Of this sum he paid \$56, and executed his bond for the balance, \$169, which is now in this office.

From these facts it will appear that the amount for which the piece of land in question was sold at the re-sale, exceeded the amount due the State upon it, at the time of the re-sale, by the sum of \$78.45. The propriety of the payment of this sum to the petitioners is a question properly addressed by them to the Legislature, and the Comptroller cannot suppose that the Senate designed by the reference, that he should express an opinion upon it. The remarks of the Comptroller in reply to the petitioners upon their application to him for a warrant upon the treasury for this surplus, are correctly set forth in the petition, and such was then and is now his construction of his powers in the matter.

At the time this piece of land was re-sold, section 10 of title 1, chapter 8 of the first part of the Revised Statutes, was in force, and constituted a part of the law for the government of this office, and had this money been called for by the petitioners, subsequent to the re-sale, and prior to the 26th April last, the day on which this section was repealed by section 17 of chap. 320 of the laws of 1831, they would have been considered entitled to the payment of such a proportion of the surplus as had been paid into the treasury by the payment made by the purchaser of the lot as before stated: provided they had been able to show themselves entitled to such payment according to the provisions of the law as it then stood. The evidence to show their right, it is supposed, is referred with the petition, and consists of the assignment from Manchester to Tower, written upon the back of the Surveyor-General's certificate, and duly acknowledged, and of the assignment from Tower to the petitioners, annexed to the certificate, but not acknowledged. This latter acknowledgment would have been required before that evidence would have been considered satisfactory as authority to pay the surplus money under the law referred to, but the Legislature may consider the assignment, without this authentication, as sufficient evidence, that the rights of the original grantor are vested in the petitioners.

It will be perceived that sec. 10, above referred to, only authorized the re-payment of surplus moneys "*received into the treasury,*"

and that the whole payment by the purchaser upon the re-sale of this lot, was less than the surplus money claimed, so that the law then in force would have authorised the payment of but a small part of the amount of money claimed. In cases of the foreclosure of mortgages, the statute imperatively required the payment into the treasury, of the whole surplus, as well as one fourth part of the amount due to the State : but in cases of re-sales by the Surveyor-General, he was not permitted to demand but one fourth of the amount for which a sale was made, so that in cases of re-sales, the time when the surplus would be "received into the treasury," would depend upon the payments which the purchaser should choose to make upon his bond, or upon the collections therefrom in case he should not make voluntary payment.

In relation to the prayer of the petitioners that they may be allowed interest upon the amount claimed, the Comptroller respectfully suggests that, in case the Legislature should determine that the principal ought to be paid to them, there may be a question whether interest ought to be asked for any period whatever. The lot was sold on the 7th June, 1830. The demand was made at the Comptroller's office for payment of the surplus on the 6th June 1831, one year after the sale ; and if the law had not been repealed, and the power had continued to make the payment, no claim for interest would have existed at that time. That fact being considered, it may well be doubted whether the delay of the petitioners to call for their dues, until the repeal of the law disenabled them to obtain the payment, furnishes them with a claim for interest for the delay growing out of their own laches.

All which is respectfully submitted,

SILAS WRIGHT, JR.

*Dated, Albany, 7th January, 1832.*



No. 16.

**IN SENATE,**

January 19, 1832.

**REPORT**

**Of the majority of the canal committee, on the  
subject of the Chenango canal.**

Mr. Hubbard, from the majority of the committee on canals, to which was referred the petitions of sundry citizens of Oneida, Madison, Cortland, Chenango and Broome, praying for the construction of the Chenango canal,

**RESPECTFULLY REPORTS—**

That they have taken the subject into consideration, and have given to it that examination which its importance to the State and the petitioners required.

In 1824, the first petition relating to the Chenango canal, was presented to the Legislature. A favorable report was made, and a survey of the route recommended. The lateness of the session prevented its being acted on. In 1825 an act was passed for the survey of the route, and in 1826 the Legislature received a report from the engineer, and the canal committee of the Assembly, for that year, reported in favor of its construction.

Since that time it has at every session occupied more or less of the attention of the Legislature. A bill for its construction has several times passed the Assembly, but has been lost in the Senate.

Since the completion of the Erie and Champlain canals, notwithstanding the signal benefits which they have conferred, by increasing our population, multiplying our wealth, enhancing our political power, and placing New-York upon an enviable eminence, as an ex-

ample to her sister States worthy of imitation, there have not been wanting among us, those who have opposed all further progress. They seemed to be startled at the existing prosperity and future grandeur of their native or adopted State. Happily other views are now acquiring the ascendancy, and our most prominent statesmen are adopting more enlarged and liberal ideas in regard to the true policy of the State.

The majority of the committee highly approve of the views of his excellency, the Governor, as expressed in his recent message, in relation to internal improvement. He lays down the true principles which should direct the Legislature, in its further efforts to develop the resources of the State and advance its prosperity. His excellency observes: "The physical resources of the State must be developed by extending to sections which have never partaken of the public bounty, the benefits of the public enterprise. The iron regions of the north should be opened to their appropriate markets; and the southern and southwestern counties should, through their various practicable channels, find outlets for their rich and valuable products.

"It is, I conceive, one of the most imperative duties of a government to open, as far as it has the means to do so, consistently with other interests, all the important avenues for the trade of the State. The discharge of this duty should not be confined to private interests, with its direct as well as incidental power and influence, without necessity."

The duty and policy of the State, being thus recognized and clearly elucidated by the Governor, it only remains for us to ascertain the propriety of the construction of the Chicago canal, and the ability of the State to accomplish the work, without imposing fresh burthens upon the people.

The practicability of the improvement, and a sufficiency of water to keep it in constant operation during even the driest seasons, are facts that seem no longer to be questioned. The committee, therefore, deem it unnecessary to expend any time upon this branch of the subject.

The cost of its construction is a subject worthy of consideration, as its cheapness goes far to show, the facility with which this important improvement can be made and sustained. The subject of

canalling in this country has arrived at such a state of perfection, that our experienced engineers are enabled, after a thorough examination, to calculate nearly to a certainty, the expense of any given work. The Chenango canal, in this particular, has not been left in a state of uncertainty. The ablest engineers of the country have been employed on it, either by the people of the Chenango valley, or the government of the State. Among them were Messrs. Roberts, Wright, Hutchinson, and Bates, gentlemen distinguished alike for their integrity and scientific acquirements. The latter gentleman was selected by the Canal Commissioners to make the survey of 1829. His report will be found among the Legislative Documents of 1830. He spent with his company about four months upon the route, and examined the nature of the soil, and estimated the expense, with a particularity rarely to be found in the records of canal engineering. He observes, in relation to his estimates, "I have endeavored so to rate them, as that they should yield a decent profit to a prudent contractor." He afterwards added ten per cent. to the aggregate amount, and then found the expense, on two of the routes, less than one million of dollars. The commissioners themselves, though they in some respects insinuate their disagreement with him, bear testimony to the accuracy of his estimates. They observe, "On examining the estimates of the engineer, we were induced to believe, that if he had erred in his calculations, the error was more in the amount of work to be done, than in the prices which he has affixed to the several parts of it." They add, that with the exception of the "deep cut on the summit," and "except in cases of unexpected difficulty," that they believe the work "can be executed for the prices he has affixed." In relation to the difficult parts of the work, Mr. Bates says, "protection, so far as they would require it, is calculated upon all of them." When we take into consideration, the experience, the ample time and the arduous labors of the engineer, and the slight examination of the route by the commissioners, we cannot be at a loss on whom to rely. The Senate, however, with all the facts and documents before them, which may be found on the Journals of successive Legislatures, will decide for themselves.

If the committee are correct in their conclusion, that the Chenango canal can be constructed for one million of dollars, then the only remaining questions to be decided are,

1st Will it, when constructed, in connection with the increased tolls on the Erie canal, yield a revenue equal to the amount of its cost, and the expense of superintendence and repairs?



2d. Will the financial situation of the State admit of its construction without imposing any additional burthens on the people?

In relation to its annual income and expense, we would refer to the report of a majority of the committee on canals, made during the session of 1831 to the Senate. Our subsequent examinations, have furnished us no reason for changing the opinions we then expressed. We are aware, that in the absence of ascertained statistical facts, all reasoning upon the amount of revenue to be derived from a canal, by the transportation of the products of a country, must be in a great measure hypothetical. But as the conclusions of last year were drawn from analogy, and statements made by the most intelligent citizens residing upon the route, we have adopted them, as approaching as nearly to accuracy as it is possible for us to approach.

If the majority of the committee did not greatly err in their calculations of 1831, then is there no necessity for discussing the concluding question, as the general fund would never be called on to pay either the interest or principal of the debt created for the construction of this canal. The premiums received on the loans, if made at an interest of five per cent, would be ample, as experience has shown, to pay the interest during the time employed in its construction, and until the period when the whole line should be rendered navigable. In this event the people using the canal would pay for its construction, whilst the State would be benefitted by the increase of its trade, the enhancement of its wealth, and a permanent addition to its revenue. That such would be the eventual result, is the deliberate opinion of a majority of the committee.

But, though we believe that the Chenango canal would eventually pay for itself, and that the people of the State would be in no danger of either direct or indirect taxation from its construction, yet honest fears may exist in the breasts of some, which we shall endeavor to remove. We are not, however, converts to the doctrine that the State should be entirely governed in its progress of internal improvement, by considerations of revenue to be derived from works of this nature, though we admit that they may properly be taken into the account. The value of landed property, and the inducement to a settlement of our vacant lands, depend upon the vicinity or remoteness of an adequate market for surplus productions, and the facility with which the necessary or ornamental requirements of an enterprising and enlightened population may be grati-

sed. Thus, almost the first object, in a new country, is the opening of roads, to facilitate internal communication. As it advances in wealth, new facilities must be created, to transport the productions of the soil and the work-shop to market; and in proportion as transportation is cheapened, is industry encouraged and wealth accumulated. And surely a wise government can never hesitate, when possessed of the means, thus to stimulate a laudable enterprise and encourage industrious habits. Without the aid of canals or improved roads, many of the important productions of the mines and the rich soil of the interior of our State must remain nearly valueless. With their aid, they will become valuable articles of exchange in commercial intercourse. Thus property is created, the commonwealth enriched and enabled to encourage a cultivation of the arts, and to diffuse the blessings of education.

Should it be found that a majority of the committee have erred in their estimates of revenue to be obtained from the Chenango canal, and a deficiency ensue, would it become a burthen upon the general fund? We are aware that a debt contracted for the construction of the canals yet remains unliquidated. But we apprehend that the fund provided for its redemption, is more than equal to the accomplishment of that object, before it will become due. The amount of surplus moneys and stocks now on hand, applicable to the extinguishment of the Erie and Champlain canal debt, will be found not to vary much from \$2,600,000. The amount of debt is \$7,001,000, redeemable in 1837 and 1845. From the results of late years, and the rapid increase of tolls, the majority of the committee are of opinion, that the nett income, over paying the interest and the expense of superintendence, repairs, &c. from the Erie and Champlain canal tolls, and the auction and salt duties, may be safely calculated, until 1837, at \$1,000,000 per annum.

From the success which the Commissioners of the Canal Fund have heretofore met with, in depositing their money, and placing it upon interest, we think it will be safe to infer, that a rate of interest may hereafter be obtained, equal on an average to four per cent per annum. Why should not these calculations be safe? Will the settlement and improvements of the west cease to progress? Will Michigan, Illinois and Ohio, cease sending their productions through our canal to market? With them, at least, our intercourse must continue. No improvements in our sister States can afford them the same cheapness and facilities of transportation as are provided by

our canals. Our own State is constantly increasing in population and wealth. Extensive forests annually disappear before the exertions of hardy industry, and are converted into cultivated fields, yielding their superabundant tribute to the prosperity of our great commercial emporium. Nor are our intermediate cities and villages deprived of a beneficial participation in the rapidly increasing trade of the west.

The history of the past has shewn us, that with the exception of a single year, the receipts of our Canal fund have increased. With these facts before us, there cannot be a rational doubt, that they will continue to increase from year to year. The committee cannot, therefore, be accused of temerity in their assumption of revenue. An estimate thus based, with an interest of four per cent on the surplus accumulations, will, at the close of the year 1837, shew a balance in stocks and cash, applicable to the redemption of the Erie and Champlain canal debt, of \$9,922,802. The present laudable practice of the Commissioners of the Canal Fund is, to deposit, during the year, the receipts as they come to hand, at such rates of interest as they can procure. The increase of the fund from this source, the committee have not taken into the calculation, though it will amount to no inconsiderable item. But aside from this, the accumulated fund will be ample to meet all the necessary calls that may be made upon it. If we deduct the whole of the Erie and Champlain canal debt, for the redemption of which the funds are pledged, (\$7,001,000,) we shall find still a balance in the treasury of \$2,921,802, which may be applied to the general objects of the State.

Should a suggestion of the Comptroller be adopted, and the sound securities of the General fund be exchanged for the moneys and more immediately available securities of the School fund, and the receipts from that source be made applicable to the ordinary expenses of the government, then it is evident that some plan must be adopted to meet the annual demands upon the treasury. If we state the disbursements for the ordinary expenses of the government at \$300,000 per annum, (which will probably be sufficient,) and issue a stock annually, after the consumption of the General fund, bearing an interest of four per cent for that sum, we shall find, that at the close of the year 1837, we shall have accumulated a debt of \$1,118,540. Deduct this from the balance of canal moneys on hand, and it will leave \$1,803,262. If we then provide for the payment of the Oswego, Cayuga and Seneca, Chemung and Crooked lake canals, we shall still find a balance in the treasury of \$699,262.

In making the foregoing estimates, it has been the intention of the majority of the committee to keep far within the range of probabilities, and to make no assumption which past experience and known facts would not justify ; and they feel perfectly confident that time will shew the justness of the conclusions to which they have arrived. And if they are correct, then is the State abundantly able, without resort to taxation, to construct the work under consideration, and to continue a liberal system of gradual internal improvement.

It must be remembered, that a large portion of the canal debts will not become due, until about eight years after a fund for their redemption will be provided ; and it can hardly be supposed, that when that result shall be produced, the State will continue the system of accumulation, for the purpose of depositing money in the various banks, and resort to direct taxation for the support of government. Nor do a majority of the committee believe, that any constitutional provision will restrict the Legislature to such a detrimental policy. Should a liberal construction of that instrument, in accordance with its spirit and intent, be adopted, the State would find no difficulty in establishing a fund which would be ample for all beneficial objects of internal improvement, without continuing the tariff of tolls so high as to throw any serious obstructions in the way of a prosperous internal commerce.

The majority of the committee have thus come to the conclusion, that the Chenango canal should be constructed ; that it will confer immense benefits upon a secluded but fertile section of the State, without imposing any additional burthens upon the people at large. They do not view with any thing like alarm, the accomplishment of a valuable improvement by the State, the whole cost of which is hardly equal to a single year's revenue of our Canal fund. They therefore ask leave to introduce a bill.

JOHN F. HUBBARD.

The first of these is the fact that the
 *Journal of the American Medical Association*
 has been the most influential of the
 medical journals in the United States
 since its founding in 1882. It has
 been the most widely read and the
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**No. 17.**

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**IN SENATE,**

**January 21, 1832.**

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**REPORT**

**Of the committee on claims on the petition of John Sergeant.**

The committee on claims, to which was referred the petition of John Sergeant, praying for compensation for services rendered the State, as its agent for the purchase of land, for the purpose of removing the New-York Indians to Michigan,

**RESPECTFULLY REPORT :**

That, from the petition and accompanying documents, it appears that the petitioner, in 1818, was appointed by Governor Clinton, at the "request" of the Indians, an agent to "manage their affairs," with a view to their "settlement and concentration" in the vicinity of Lake Michigan. To forward this object, three thousand dollars was advanced by the Governor, to enable them to make the necessary purchase of lands. Subsequently an additional allowance was made, of \$1,953.68, being the balance due the Indians for lands, by virtue of the treaty of 1818, as appears by a report of the Comptroller, made to the Senate, during the session of 1829.

A number of the Indian chiefs, as will be seen by their petition of 1827, stipulated to make a grant to the petitioner, as a remuneration for his services as their agent, of five hundred acres of land, for which he agreed to advance them one thousand dollars. This agreement, or contract, between the Indians and the petitioner, the latter alleges, was approved by Governor Clinton, though there is now no evidence of that fact to be found. We must rely for its truth upon the unsupported assertion of the petitioner. It cannot, how-

ever, be very material whether it be admitted or denied, as the Governor was not authorised to sanction such a contract.

The Indians, when they ceded their lands to the State, made no reservation in favor of the petitioner ; but received pay for the whole, and afterwards petitioned to the Legislature to remunerate him.

In 1828, the Legislature passed a law giving the petitioner one thousand five hundred dollars ; and in 1829 another, giving him two thousand dollars more. The latter act contained a clause declaring it in full of all claims against the State ; and previous to receiving the money from the treasury, he signed a receipt to that effect. He has, therefore, received from the State three thousand five hundred dollars for his services rendered to the Indians, and for which they had agreed to pay him.

The petitioner now asks the State to pay him one thousand dollars and the interest on the same, from the date of the treaty of 1818. He founds the justice of his claim upon the alleged fact, that he had paid the Indians that sum for the five hundred acres of land, in pursuance of his agreement with them, which they have never refunded to him. He does not deny that the State actually paid for the lands, but says it was done with a full knowledge that he had previously paid the Indians. The allegation, however, is not supported by adequate testimony.

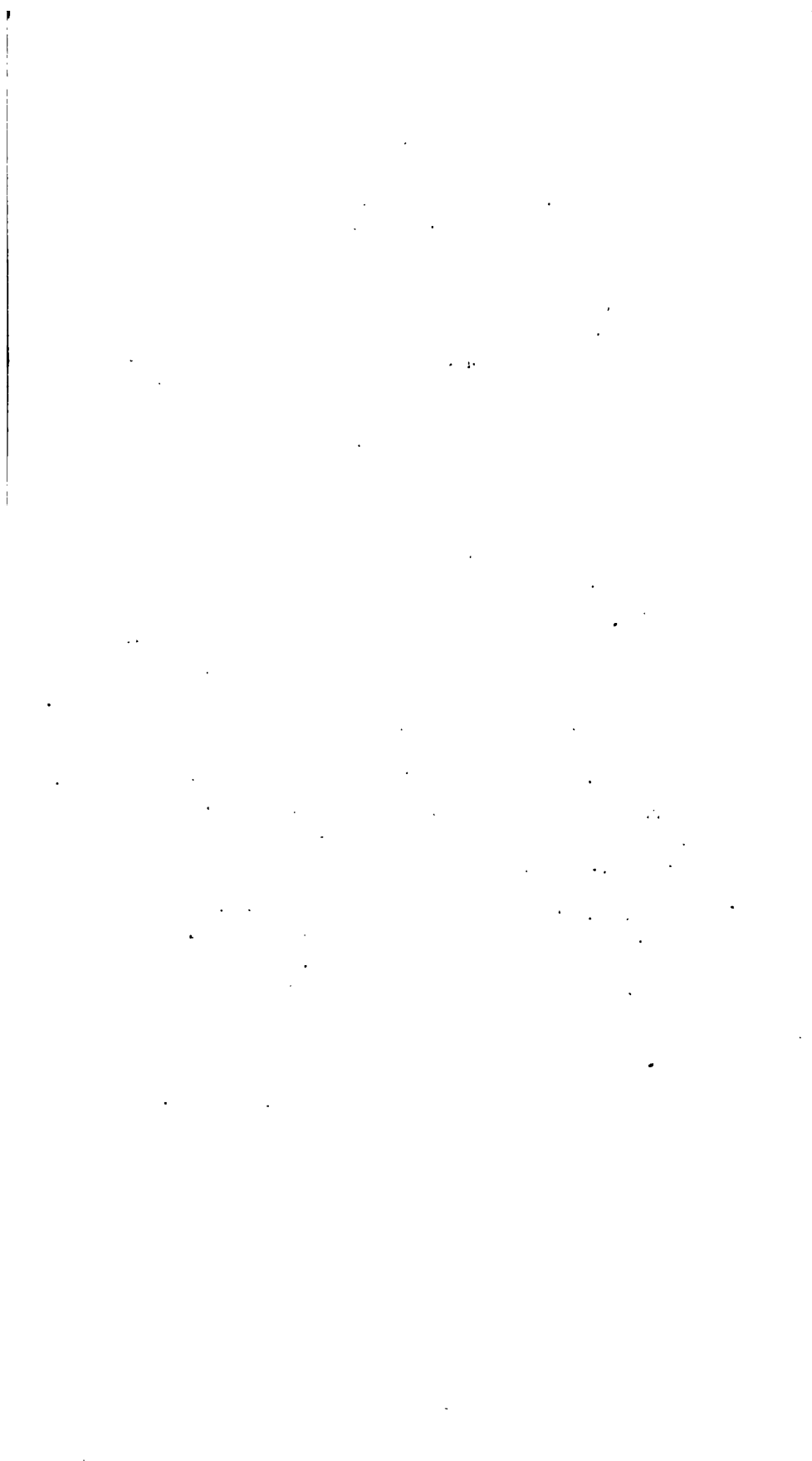
The committee, after a full examination of the facts and circumstances attending this case, are satisfied, that the petitioner was never considered by the government as the agent of the State, but as the agent of the Indians, to "manage their affairs," and protect their rights, as well in their dealings with the State, as with the western tribes. It does not appear that the State or the executive, in the commencement of the transaction, ever held out to the petitioner any prospect of reward for his services ; on the contrary, from his own shewing, it is certain that he looked to the Indians alone for indemnity. But they neglected to fulfil their agreement by making, in their treaty, a reservation of the five hundred acres of land, which they had stipulated to convey to him ; and having received their money, turned him over to the justice of the Legislature. Had he been considered the agent of the State, it is probable that compensation would have been provided by the government, and the amount

agreed on, as it is not our usual practice to appoint officers, and allow them to fix the price of their salaries. But it is clearly evident, from the documents and circumstances, that compensation from the State was never thought of, until the Indians had failed to fulfil their contract.

If the committee are right, then the petitioner never had a valid claim upon the State. But, as it had been generally supposed, that he was mainly instrumental in procuring an advantageous treaty, and relieving the State from a burthensome and disagreeable population, the Legislature deemed it proper to make him such a donation as would be equivalent to his losses and services. This they have done, and taken his receipt. The committee cannot conceive that the State is called upon by any principle of justice, to assume the place of the Indians, and make good to him his contract with them—a contract in which it had no agency or concern ; and of course could not be responsible for its fulfilment. But, notwithstanding, the State has substantially done it. The five hundred acres, at nine dollars per acre (the average value of the lands) would amount to \$4,500. Deduct \$1,000, the amount paid for it by the State to the Indians, and it will be reduced to \$3,500 ; the precise sum which the petitioner has received. Had it been a *legal* claim, he could have demanded, in addition, only the interest up to the time of payment. His advance of one thousand dollars was at his own risque, and made in the hope of speculation ; and in its loss he has only met with a disappointment common to unsuccessful speculators. The State cannot guarantee the success of individual enterprise.

Finally, the committee are of opinion, that the petitioner is neither legally or equitably entitled to any further remuneration from the State ; and therefore offer the following resolution :





IN SENATE,

January 21, 1832.

ANNUAL REPORT

Of the Inspector of green Hides and Skins, in and for the city of Albany.

The inspector of green hides and skins, in and for the city of Albany, makes the following report.

|  |          |
|--|----------|
| That from the 9th of May, 1831 to the 5th of September following, he inspected 767 hides, which at 3 cents per hide, amounts to.....             | \$23 01  |
| That during the same period he inspected 2,172 skins, which at 1 cent per skin, amounts to.....  | 21 72    |
| That from the 5th of October, to the 3d of December in the aforesaid year, he inspected 5,741 hides, which at 3 cents per hide, amounts to ..... | 172 23   |
| Total,.....  | \$216 96 |

The inspector in making the foregoing report, would take the liberty of suggesting the propriety of making certain amendments to the law, creating the office which he holds, passed April 22nd, 1831. It is believed that if the law should be so amended as to require the inspector of the city of Albany to provide an office, where all green hides and skins, brought to this city, and offered here for sale, might be inspected by him, and where he could at all times be found when required to act in his official capacity, the most beneficial effects would be produced, and the convenience of sellers and purchasers greatly promoted. Should the proposed amendment to the act be made, it will be seen that disbursements for office rent, and other expenses inseparable from an establishment of the kind hereby recommended, will have to be incurred, and should be met by an increase of the rate of fees now allowed for inspection, for otherwise

they would become a charge on the present income of the office, and thereby render the compensation received by the inspector for his time and trouble not only wholly inadequate, but would in fact reduce it to the merest pittance.

All of which is respectfully submitted.

A. COMSTOCK,  
*Inspector.*

*Dated Albany, January 3d, 1832.*

The inspector would also state, that most of the slaughter-houses in the county of Albany, are located out of the bounds of the city. That it is contended that the right to inspect is confined by the law of last winter to all such green hides and skins as are sold in the city of Albany, and that all those disposed of at these establishments, they being out of the city, are not subject to its provisions; under these circumstances it is recommended that the said law be so amended as to extend the jurisdiction of the inspector over the whole county, and to require all green hides and skins sold at said establishments to be inspected.

A. COMSTOCK.

**No. 19.**

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**IN SENATE,**

**January 23, 1832.**

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**REPORT**

**Of the Committee, in relation to the Jail of Chautauque county.**

**3** The committee, to whom was referred the petition of sundry inhabitants of the county of Chautauque, for a law authorising the Supervisors of that county, to raise the sum of three thousand five hundred dollars, for the erection of a new jail,

**REPORTED :**

That they find accompanying the petition, a certified copy of a resolution of the board of Supervisors of the county of Chautauque, adopted at their annual meeting in November last, in favor of raising the sum of three thousand five hundred dollars in three equal annual instalments, for the purpose of rebuilding the jail in that county, And your committee find another document accompanying the petition, purporting to be the official report of the inspectors of the jail, for that county, declaring the jail to be in a dilapidated and ruinous condition, unsafe for the keeping of prisoners, and without the requisite number of rooms necessary for the confinement of prisoners required by law. Your committee are therefore of opinion that the prayer the petitioners ought to be granted, and they have accordingly prepared a bill, which they ask leave to introduce.

our canals. Our own State is constantly increasing in population and wealth. Extensive forests annually disappear before the exertions of hardy industry; and are converted into cultivated fields, yielding their superabundant tribute to the prosperity of our great commercial emporium. Nor are our intermediate cities and villages deprived of a beneficial participation in the rapidly increasing trade of the west.

The history of the past has shewn us, that with the exception of a single year, the receipts of our Canal fund have increased. With these facts before us, there cannot be a rational doubt, that they will continue to increase from year to year. The committee cannot, therefore, be accused of temerity in their assumption of revenue. An estimate thus based, with an interest of four per cent on the surplus accumulations, will, at the close of the year 1837, shew a balance in stocks and cash, applicable to the redemption of the Erie and Champlain canal debt, of \$9,922,802. The present laudable practice of the Commissioners of the Canal Fund is, to deposit, during the year, the receipts as they come to hand, at such rates of interest as they can procure. The increase of the fund from this source, the committee have not taken into the calculation, though it will amount to no inconsiderable item. But aside from this, the accumulated fund will be ample to meet all the necessary calls that may be made upon it. If we deduct the whole of the Erie and Champlain canal debt, for the redemption of which the funds are pledged, (\$7,001,000,) we shall find still a balance in the treasury of \$2,921,802, which may be applied to the general objects of the State.

Should a suggestion of the Comptroller be adopted, and the sound securities of the General fund be exchanged for the moneys and more immediately available securities of the School fund, and the receipts from that source be made applicable to the ordinary expenses of the government, then it is evident that some plan must be adopted to meet the annual demands upon the treasury. If we state the disbursements for the ordinary expenses of the government at \$300,000 per annum, (which will probably be sufficient,) and issue a stock annually, after the consumption of the General fund, bearing an interest of four per cent for that sum, we shall find, that at the close of the year 1837, we shall have accumulated a debt of \$1,118,540. Deduct this from the balance of canal moneys on hand, and it will leave \$1,803,262. If we then provide for the payment of the Oswego, Cayuga and Seneca, Chemung and Crooked lake canals, we shall still find a balance in the treasury of \$699,262.

In making the foregoing estimates, it has been the intention of the majority of the committee to keep far within the range of probabilities, and to make no assumption which past experience and known facts would not justify ; and they feel perfectly confident that time will shew the justness of the conclusions to which they have arrived. And if they are correct, then is the State abundantly able, without resort to taxation, to construct the work under consideration, and to continue a liberal system of gradual internal improvement.

It must be remembered, that a large portion of the canal debts will not become due, until about eight years after a fund for their redemption will be provided ; and it can hardly be supposed, that when that result shall be produced, the State will continue the system of accumulation, for the purpose of depositing money in the various banks, and resort to direct taxation for the support of government. Nor do a majority of the committee believe, that any constitutional provision will restrict the Legislature to such a detrimental policy. Should a liberal construction of that instrument, in accordance with its spirit and intent, be adopted, the State would find no difficulty in establishing a fund which would be ample for all beneficial objects of internal improvement, without continuing the tariff of tolls so high as to throw any serious obstructions in the way of a prosperous internal commerce.

The majority of the committee have thus come to the conclusion, that the Chenango canal should be constructed ; that it will confer immense benefits upon a secluded but fertile section of the State, without imposing any additional burthens upon the people at large. They do not view with any thing like alarm, the accomplishment of a valuable improvement by the State, the whole cost of which is hardly equal to a single year's revenue of our Canal fund. They therefore ask leave to introduce a bill.

JOHN F. HUBBARD.

# THE JOURNAL

OF THE

ROYAL SOCIETY

OF LONDON

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1911.

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(1911.)

**No. 21.**

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**IN SENATE,**

**January 25, 1832.**

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**ANNUAL REPORT**

**Of George Seaman, Inspector of Pot and Pearl Ashes  
in the County of New-York, for the year 1831.**

*To the Honorable the Senate and House of Assembly of the State  
of New-York, in Legislature convened.*

The annual report of pot and pearl ashes inspected in the county of New-York, for the year commencing on the first day of January, one thousand eight hundred and thirty-one, and ending on the thirty-first day of December, in the same year, according to law ; the average price of which, and the probable value thereof, as near as I have been able to ascertain the same, is set opposite to the respective qualities and quantities hereinafter mentioned and expressed.



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**No. 21.**

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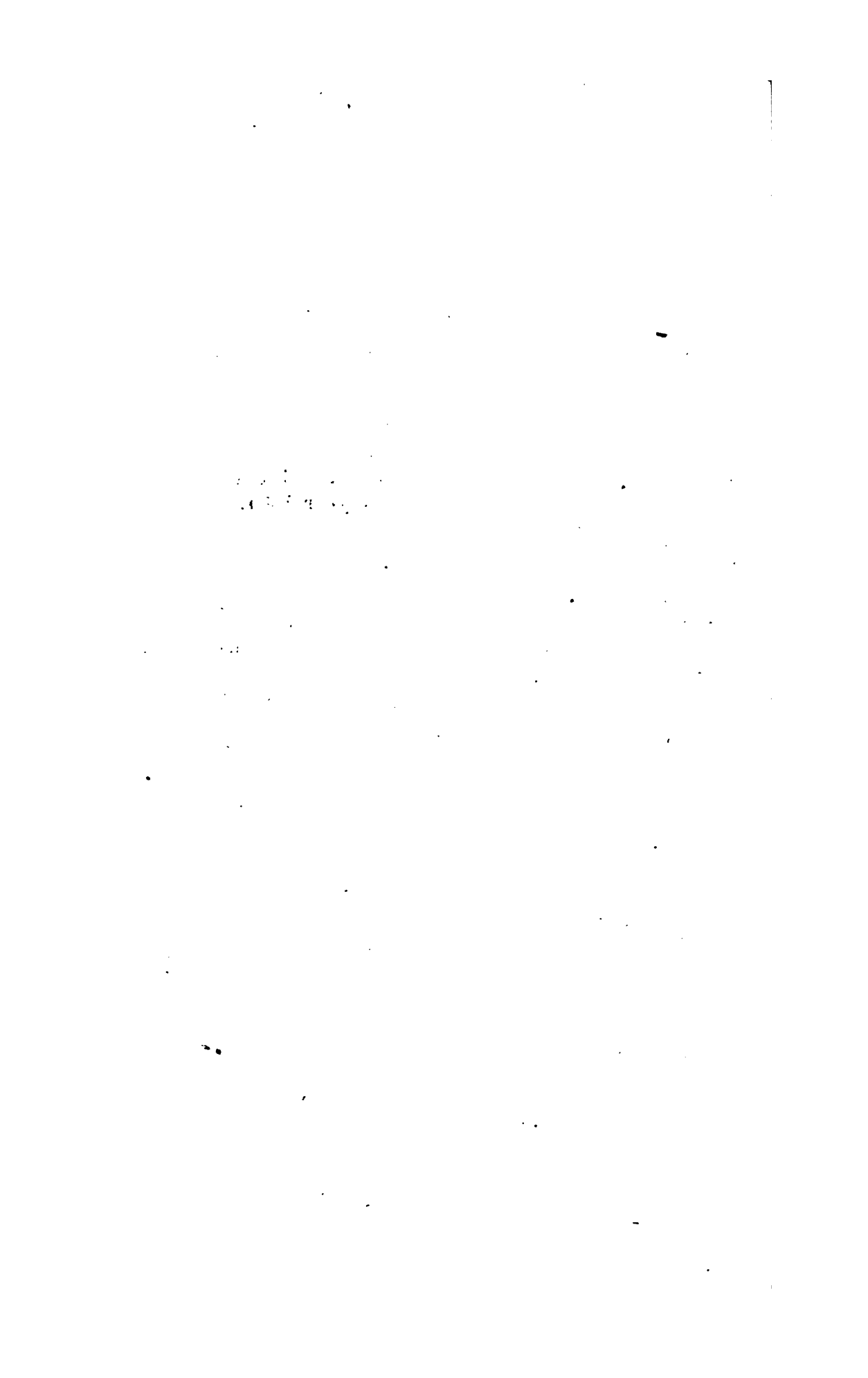
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| 2,019  | do .....                              | 86,870 35    |
| 300    | do .....                              | 10,800 11    |
| 89     | do .....                              | 1,790 54     |
| 3,576  | do .....                              | 186,000 00   |
| 519    | do .....                              | 23,373 41    |
| 47     | do .....                              | 1,808 28     |
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**GEORGE SEAMAN,**  
*Pearl Ashes, for the county of New-York.*  
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1. The first group of people who are interested in the study of the history of the United States are the people who are interested in the history of the United States.

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**No. 22.**

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**IN SENATE,**

**January 27, 1832.**

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**REPORT**

**Of the committee on banks and insurance companies, on applications to the Legislature for banking institutions.**

The committee on banks and insurance companies, having observed the unusual number of applications to the Legislature for banking institutions, to be located in various parts of the State, and particularly in the city of New-York, for which place there are ten of these institutions noticed in the State paper to be applied for at the present session; and in order that the Senate may know the opinion of their committee on this subject, they beg leave to submit the following

**REPORT :**

That although they are ready to admit the great utility of banking institutions to the trading and manufacturing interests of this State, they are nevertheless of opinion that there ought to be some limit to their creation by the Legislature. In this opinion the committee believe they express the sentiments of a large majority of those who have thought on and understand the subject, and therefore the only difference which can exist is, to what amount that limit shall extend.

The danger to be apprehended, under the present system, seems to be the unbounded confidence which it is calculated to inspire in the community at large. This confidence has a tendency to impair that watchfulness, which was always on the alert when banking institutions were applied for; and the general belief that the bank fund is an unfailing security to the creditor, is calculated to favor

and increase the demand for these institutions, to an alarming extent.

It is frequently urged by applicants for new charters, that under the present system there can be no danger of increasing bank capital: that the greater the capital the greater will be the fund set apart for the redemption of debts, in the case of failure. The committee, however, cannot subscribe to this opinion. Banking business, like all other business, may be overdone, and if more institutions are created than are necessary and proper, the result eventually must be, they will be compelled to wind up and discontinue, or they will become insolvent and explode.

Banking cannot be safely extended beyond its legitimate bounds; and it may readily be conceived, that one banking institution may be well and profitably sustained in a county, or given extent of country, while, if the same business was divided between a number of these institutions, all would eventually become unproductive, or fail.

The principle is pretty generally conceded, that no paper medium for circulation can be safe for the community, except it be based on a specie capital, of sufficient amount at least to redeem the ordinary return of bank bills from circulation. But what amount of specie each bank ought to retain in their vaults for this purpose, and in order to meet any emergency that may occur in the prosecution of their business, is a question the committee are not prepared to answer, from any data now in their possession.

It must be admitted, that an increase of banking capital in places where one or more banks are already in operation, does not increase the amount of specie, it merely takes from the amount then held by the banks in operation a certain portion, and places it into the possession of those then going into operation. Neither will the creation of new banks, in a place like New-York or Albany, for instance, where there are already a considerable amount of banking capital, increase the ability of the institutions, in the aggregate, to extend with safety their loans and discounts; for in the same ratio as the specie capital is divided, the deposits and circulation will be lessened to the banks respectively; and the means of the existing banks being lessened by the operations of those brought into existence, the accommodation to the public, in the aggregate, will rather be diminished than increased. By the concentration of capital in what may be deemed a sufficient number of banking institutions,

there is more ability to extend the necessary accommodation to the public, than when the same amount of capital is diffused among a much greater number of them. The same rule which operates in the case of individuals, will operate in the case of banks. If one hundred thousand dollars be equally distributed among five hundred individuals, each would only have the ability to loan two hundred dollars; but, if the same sum was held by a single person, his loans may be extended to thousands, and so to the amount of the sum concentrated, or required as loans.

There are seasons, in the course of trade, when there will be a redundancy of specie in the country; but this seldom continues for any considerable period, as the operations of foreign commerce, and the effects of trade, naturally draws from the country all the specie which the credit of the banks and other facilities of trade will warrant.

The evil is, that whenever banks find their vaults well stored with the precious metals, they uniformly extend their discounts, and thus throw into circulation an increased amount of their bills. Banks will overtrade, as well as individuals, and the consequences are the same to both. The objects of the directors and stockholders of a monied institution are, to make the largest possible amount of interest out of their capital, and to effect this object, they frequently extend their loans and discounts beyond due limits. The facilities thus afforded their dealers is an inducement to enter into speculations, either by the purchase of articles with a view to a considerable rise in the price, or for the purpose of export, or, by importing an amount of foreign goods, far above the wants or consumption of the community. The demand for these articles being limited by the consumption, and other circumstances, much of the goods thus purchased or imported, lay on hand unsold, and consequently are reduced in their value. A disappointment in realizing the avails of this property in cash, and payment for the goods imported becoming due, the banks are pressed for additional loans, with which foreign bills are purchased, or the specie is drawn from the vaults, and sent, where something more valuable than bank bills is necessary, for the payment of debts. The banks feel the effect of this withdrawal of their specie, and a reduction of their discounts follow, producing the embarrassment, if not the failure, of their dealers. In time, the evil corrects itself, but at the cost of the whole trading community, either by the failure of their debtors, the diminished means of others, and the reduction in the general value of merchandize and other property.



The extensive commerce of this State, and the ever prevailing propensity of man to raise a fortune with the greatest possible ease and rapidity, naturally tend to bring about these revulsions in our currency. The main cause of them, however, as the committee believe, is nearly the same in every instance, viz. the extraordinary loans and issues of the banks, in the first instance, and the consequent overtrading of individuals, induced by such loans and issues.

In order to prevent the withdrawal of the specie from the country during the late war with Great Britain, the banks in the city of New-York suspended specie payments. This enabled them to extend their loans and discounts to an unlimited amount; and the consequence was, that after peace was proclaimed, and the resumption of specie payments effected, embarrassment and failure were experienced to an alarming extent.

The years 1824 and 1825 was another period of failure and distress. The exportation of specie from the port of New-York in 1825 was between two and three millions of dollars more than the imports; a sure evidence of the extraordinary issues of the monied institutions of that city. It was in these years also, that the legislature chartered an unusual number of monied institutions for the city of New-York, which entered extensively into the discounting of notes and the issuing of their bonds as money. The result was, the failure of several of these newly created institutions, together with more than one hundred mercantile and trading houses of that place.

In 1830 specie was more abundant than it had been known to exist for a great number of years before, and the consequent loans and issues by the banks has been proportionably great. But in 1831, as the committee are informed, the exportation of specie from the port of New-York has been unusually large. More than a million and a half was shipped during the two first quarters of the year, and it is judged that a much larger quantity was sent off in the two last quarters. This withdrawal of the precious metals has, as usual, been felt by the banks, and in their endeavors to correct the error of over issues, much embarrassment, as the committee are assured; now exists among the mercantile and trading population of that city.

If banks were confined in their discounts and loans, to bills or notes received for goods sold in the regular course of business, the evils referred to by the committee, it is believed, would rarely be

experienced; but whenever a considerable portion of the business of banks consists in the discounting of what is called accommodation notes, not such as are given for a valuable consideration, and which it is the intention of the makers to pay at maturity, but notes made for the purpose of raising money on the credit of the drawers and endorsers, to be renewed as often as the wants of the borrower, or the pleasure of the lender, will permit, it will certainly follow, when specie is in demand, and the vaults of the banks are resorted to, that any considerable reduction of these loans will be found impracticable; and in order to ward off the danger of an insufficiency of specie to meet the demand, a bank thus situated will be compelled to refuse further loans, even to those whose regularity in business ought to entitle them to the accommodation. In this way, the evil is not only visited on those who borrow on accommodation paper, but on the bank which discounts it, as well as on a portion of the business part of the community.

These revulsions in trade may be owing to other causes, besides those assigned by the committee; but that one of the principal sources of the evil is the overtrading of a portion of the community, as well as the banks, they think cannot be denied. If evidence were wanted, it would only be necessary to refer to the fact, that in almost every instance, an unusual exportation of specie seems to precede the pressure and embarrassment in trade; and taking into consideration the fact, in connection with the time of exportation, it would seem to follow, that the cause can be no other than the one stated.

A redundancy of bank capital is an evil, which has been severely felt by several of our sister States, and will be felt again, whenever the issue of paper shall be so abundant, as to cause a considerable depreciation in its value, and by that means, shake the confidence of the public in the institutions issuing it. The result of unduly increasing these institutions in the States of Pennsylvania, Ohio, Kentucky, and other places, has been disastrous in the extreme, and ought to be a warning to every one, who is not reckless of the consequence, to use their influence to prevent a like result with us.—The committee might refer to facts resulting from the same principle in other countries, were it necessary. The disasters which afflicted the whole nation by the failure of the Bank of France, notwithstanding the strong arm of power was exerted to uphold the institution, is a case in point, as the catastrophe was entirely owing to the enormous amount of paper thrown into circulation, and which

the bank was unable to redeem. In England there are frequent cases of alarm by the failure of banking establishments ; and instances are quoted by writers on the subject, when seventy-one banks have failed in the course of a single year. We are called upon, therefore, by the experience of others, to avoid these evils, by omitting to increase this species of capital, in places where there is evidently a sufficiency for all useful purposes, thereby impairing the solvency, and crippling the means for usefulness of those now in operation. That the bank capital now in operation in the city of New-York, is competent to the wants of that city, the committee think, cannot be disputed. There are now *twenty* banks in operation, including the branch, whose united capitals are \$18,061,000, and to which may be added the Trust Company, with a capital of one million of dollars, and who are authorised to loan on bills and notes—one of the functions of a banking institution. The amount of fire and marine insurance companies, whose capitals are loaned on the security of stocks and real estate, is about \$11,000,000 ; to which may be added the Lombard association and pawn brokers', which cannot be less than half a million more ; making, in the aggregate, *thirty and a half millions of dollars*, while the whole personal estate, as assessed in 1831, only amounted to the sum of \$42,058,344. By this it would appear, that the monied institutions of the city of New-York, are nearly three-fourths in amount of the whole personal property of its citizens, whether the same consist in ships, stocks, money or merchandize.

An attempt is made, through the medium of a printed paper addressed to the Legislature by the applicant for the "Leather Manufacturers' bank" in the city of New-York, to show that there has been a great increase of property in that city since 1827 ; and for that purpose, the value of the real and personal estate in 1831, is compared with that of 1827 ; by which it is made to appear that, in 1831, the said estates were \$27,068,288 more than they were in 1827. There is an error of twenty thousand dollars however, in the above statement, as the increase, according to the returns from the office of the Comptroller, is only \$27,048,288. This increase is by no means real ; as it is believed a considerable portion of the money loaned on real estate in the city of New-York, is supplied from foreign sources, and not by the residents of the city. The real estate therefore is valued without reference to the incumbrance on it, and the mortgage residing out of the county, the amount loaned

cannot be reached by the assessors, and consequently forms no part of the assessed amount of the personal estate of the county.

The whole of the real estate of the city was valued, in 1831, at the sum of \$97,221,870. The incumbrance on it is considerable, as appears by an able report to the Senate, by the committee on finance of the last year. (Senate documents, 1831, number 78.) It is there stated, that from facts derived from the register's office in New-York, it appears that near *fifty millions of dollars* are loaned in that city, on mortgage. It is not improbable, therefore, that the \$27,000,000 alluded to, forms a part of the fifty millions thus loaned, and that the assessed increase has arisen from the application of this money to the erection of buildings of various descriptions in the city. The true state of the case is, therefore, that the credit of the city has been extended, but it is doubted whether its real property has been much increased.

An attempt is also made to show, that the banking capital of the city is \$190,000 less at present than that authorised in 1827. The report of the Comptroller, however, made to the Legislature in 1827, (Assembly Journal, page, 442,) states the banking capital then authorised at \$14,185,750; and, by a late report from the same officer, made to the Assembly, the present banking capital, actually paid in, is stated at \$15,560,000, making an excess in 1831, over that of 1827, of \$1,375,250. This, however, is far from being a true state of the case, as respects the difference in the amount of capital now and in 1827. The capital operated on by the banks now has all been paid in, while in 1827, there was a large amount of the capital authorised that had never been paid for, or the stock was held by the banks, being thrown on their hands by the failure of their creditors. The amount actually paid to the City bank was but \$800,000, while the amount authorised was \$1,496,250. The Bank of America held \$50,000 of their own stock. The Tradesmen's bank \$200,000. The Fulton bank, which was authorised to take up a capital of a million, had an act passed in 1827, reducing it to \$750,000; and in 1828 the bank obtained another act, the preamble of which states that, by various losses, the capital had been reduced to about \$300,000. The Comptroller, in his report of 1827, however, states the capital at \$500,000, and as the capital paid was only three hundred thousand, they held \$200,000 of their own stock. The Franklin bank, it is believed, never had more than \$200,000 of its stock actually paid for, as appears from the report of the re-



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| 2,019  | do .....                               | 86,870 35    |
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**GEORGE SEAMAN,**  
*Pearl Ashes, for the county of New-York.*  
of New-

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**No. 22.**

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**IN SENATE,**

**January 27, 1832.**

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**REPORT**

**Of the committee on banks and insurance companies, on applications to the Legislature for banking institutions.**

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The Chautauque county bank, with a capital of \$100,000, filed the affidavit, required to enable them to commence business, on the 9th instant, but never having made a payment to the fund, it is not found upon the statement and is not considered as coming within the call. The Mechanics' and Traders' bank of New-York filed the affidavit on the 5th day of April last, but ~~has~~ not made its contribution to the fund, and is not therefore, for the same reason, inserted in the statement.

The only investment as yet made from the moneys composing the capital of this fund is that of the sum of \$8,567.34 invested in the purchase of \$8,082.40 of the five per cent canal stocks of this State, redeemable in July 1837, at a premium of six per cent. For any suggestions the Comptroller has to make in relation to investments of these moneys, he respectfully refers to the remarks under the head of "Bank Fund" in his annual report communicated to the Assembly on the 4th instant. It may be well however to direct the attention of the Legislature to the fact that, if these investments are to be made in the stocks now authorised to be purchased for that purpose, considerable sums must be paid as premium, and that, as the law now stands, such payments will diminish the capital of the fund by their amounts, inasmuch as there is no authority to use the income of the fund to supply the place of the money taken to pay the difference between the market and the par value of the stocks.— Thus it will be seen that in the small investment already made, \$484.94 were paid as a premium upon the stock, while the stock can only be considered as adding its par value to the capital of the fund. It may indeed be said that the stock, if put again into the market, may return to the fund the premium paid for it; but it should be recollected that the purchases are for investment, and that nothing but a misfortune to the fund, which ought not to be anticipated, could authorise the sale of this stock until it will become redeemable. It is therefore respectfully suggested, as the higher the premium paid the better will be the income derived from the investment, that provision ought to be made to pay the premiums from the revenue of the fund, and, if stocks should be sold, to let the premiums realised go again to the revenue, so that the capital of the fund may not be varied from either of these causes.

The payments out of the fund for salaries to the Bank Commissioners, have been as follows:

To GEORGE R. DAVIS, Commissioner.

1831.

|          |  |            |                   |
|----------|--|------------|-------------------|
| Jan. 7.  | For salary from Feb. 6 to Dec. 31, 1830, | \$1,352 74 |                   |
| April 1. | do do Jan. 1 to April 1, 1831,           | 375 00     |                   |
| July 1.  | do do April 1 to July 1, do              | 375 00     |                   |
| Oct. 1.  | do do July 1 to Oct. 1, do               | 375 00     |                   |
| 1832.    |  |            |                   |
| Jan. 1.  | do do Oct. 1 to Dec. 31, do              | 375 00     |                   |
|          |  |            | <u>\$2,852 74</u> |

To CHARLES STEPHENS, Commissioner.

1831.

|          |                                     |                  |                 |
|----------|-------------------------------------|------------------|-----------------|
| Jan. 21. | For salary from Jan. 15 to Dec. 31, | 1830, \$1,443 51 |                 |
| April 1. | do do Jan. 1 to April 1, 1831,      | 375 00           |                 |
| July 1.  | do do April 1 to July 1, do         | 375 00           |                 |
| Oct. 1.  | do do July 1 to Oct. 1, do          | 375 00           |                 |
| 1832.    |                                     |                  |                 |
| Jan. 1.  | do do Oct. 1 to Dec. 31, do         | 375 00           |                 |
|          |                                     |                  | <u>2,943 51</u> |

To JAMES REESE, Commissioner.

1831.

|          |  |            |                 |
|----------|--|------------|-----------------|
| Jan 28.  | For salary from Feb. 6 to Dec. 31, 1830, | \$1,352 74 |                 |
| April 1. | do do Jan. 1 to April 1, 1831,           | 375 00     |                 |
| July 1.  | do do April 1 to July 1, do              | 375 00     |                 |
| Oct. 1.  | do do July 1 to Oct. 1, do               | 375 00     |                 |
| 1832.    |  |            |                 |
| Jan. 1.  | do do Oct. 1 to Dec. 31, do              | 375 00     |                 |
|          |  |            | <u>2,852 74</u> |

Making the total payments for salaries,..... \$8,648 99

It has been doubted whether these payments should have been made from the capital of the fund, and were the only provision upon this subject that contained in the 7th section of the act, that doubt might be well entertained. But the 26th section of the act, declares that "there shall be allowed to each of said Commissioners the annual salary of fifteen hundred dollars, to be paid quarterly out of the Bank fund." Here is no restriction to pay the salaries out of the

revenue of the fund; but they are to be paid "out of the bank fund." The seventh section directs that before a distribution of the income shall be made to the contributing banks, the payments for the salaries of the Commissioners shall be deducted from that income, so that the final effect will be to pay the salaries out of the revenues of the fund. But it would have seemed to the Comptroller an unreasonable construction of this act, that these officers must perform their expensive duties without compensation, until the investments of the capital of the fund could be made to furnish the means for their payment; and he surely would not have adopted that construction, when the different provisions were susceptible of a different one, equally natural from the language, and much more consonant to what he believed to be the spirit and meaning of the act, and in the result equally safe for the preservation of the entire capital of the fund. The payments have therefore been made as before stated, and as yet almost entirely from the capital moneys.

No other expenses have been paid out of this fund, nor is the Comptroller aware that any can occur chargeable upon it, except in the contingency of a bank failure.

All which is respectfully submitted,

SILAS WRIGHT, JR.

*Dated Albany, 26th January, 1832.*

A STATEMENT showing the names of the Banks which have contributed to the Bank Fund, entered under an alphabetical arrangement of the respective counties in which the banks are located; the Capital of each Bank paid in; the amount contributed to the Fund by each Bank in 1830-31, and in 1831-32, and the time for which the first contribution was calculated in each case.

| COUNTIES.                           | Capital.   | Contributions of 1830-1. | Contributions of 1831-2. | Time of contribution for first payment by each bank. |
|-------------------------------------|------------|--------------------------|--------------------------|--|
| ALBANY, CITY AND COUNTY.            |            |                          |                          |  |
| Bank of Albany, .....               | 240,000 00 | 1,200 00                 | 1,200 00                 | Whole year.  |
| Canal Bank, .....                   | 300,000 00 | 1,333 33                 | 1,500 00                 | 10 months, 20 days.                                  |
| Mechanics' and Farmers' Bank, ..... | 442,000 00 | 2,138 18                 | 2,210 00                 | Whole year.  |
| New-York State Bank, .....          | 369,600 00 | 1,682 94                 | 1,733 34                 | do.  |
| BROOME COUNTY.                      |            |                          |                          |  |
| Broome County Bank, .....           | 100,000 00 | .....                    | 83 33                    | 2 months.  |
| CAYUGA COUNTY.                      |            |                          |                          |  |
| Bank of Auburn, .....               | 200,000 00 | 1,000 00                 | 1,000 00                 | Whole year.  |
| CHENANGO COUNTY.                    |            |                          |                          |  |
| Bank of Chenango, .....             | 120,000 00 | 600 00                   | 600 00                   | Whole year.  |
| COLUMBIA COUNTY.                    |            |                          |                          |  |
| Hudson River Bank, .....            | 100,000 00 | 116 44                   | 500 00                   | 85 days.   |
| DUTCHESS COUNTY.                    |            |                          |                          |  |
| Bank of Poughkeepsie, .....         | 100,000 00 | 70 82                    | 500 00                   | 1 month, 21 days.                                    |

| COUNTIES.                     |  | Capital.     | Contributions of 1850-1. | Contributions of 1851-2. | Time of contribution for first payment by each bank.                   |
|-------------------------------|--|--------------|--------------------------|--------------------------|--|
| ERIE COUNTY.                  |  |              |                          |                          |  |
| Bank of Buffalo, .....        |  | \$200,000 00 | .....                    | 333 33 1/4 months.       |  |
| GENESEE COUNTY.               |  |              |                          |                          |  |
| Bank of Genesee, .....        |  | 100,000 00   | 395 83                   | 500 00 9 1/4 months.     |  |
| GREENE COUNTY.                |  |              |                          |                          |  |
| Catskill Bank, .....          |  | 150,000 00   | 636 66                   | 750 00                   | Whole yr. on \$110,000<br>6 mos. 5 ds. on 27,500<br>3 months on 12,500 |
|                               |  |              |                          |                          | \$150,000  |
| JEFFERSON COUNTY.             |  |              |                          |                          |  |
| Tanners' Bank, .....          |  | 100,000 00   | .....                    | 166 67 1/4 months.       |  |
| Jefferson County Bank, .....  |  | 200,000 00   | 200 00                   | 200 00                   | Whole year.  |
| LIVINGSTON COUNTY.            |  |              |                          |                          |  |
| Livingston County Bank, ..... |  | 100,000 00   | 166 67                   | 500 00 1/4 months.       |  |
| MADISON COUNTY.               |  |              |                          |                          |  |
| Madison County Bank, .....    |  | 100,000 00   | .....                    | 166 67 1/4 months.       |  |
| MONTGOMERY COUNTY.            |  |              |                          |                          |  |
| Montgomery County Bank, ..... |  | 100,000 00   | .....                    | 125 00 3 months.         |  |

| MONROE COUNTY.                    |              |          |          |                     |
|-----------------------------------|--------------|----------|----------|---------------------|
| Bank of Monroe,.....              | 300,000 00   | 1,333 33 | 1,500 00 | 10 months, 20 days. |
| NEW-YORK, CITY AND COUNTY.        |              |          |          |                     |
| Bank of America,.....             | 2,001,200 00 | .....    | 4,851 00 | Whole year.         |
| Butchers' and Drivers' Bank,..... | 300,000 00   | .....    | 1,299 87 | 10 months, 12 days. |
| City Bank,.....                   | 720,000 00   | .....    | 1,800 00 | 6 months.           |
| Greenwich Bank,.....              | 200,000 00   | .....    | 972 22   | 11 months, 20 days. |
| Mechanics' Bank,.....             | 2,000,000 00 | .....    | 4,356 17 | 159 days.           |
| Merchants' Bank,.....             | 1,490,000 00 | .....    | 2,729 17 | 5 months.           |
| Merchants' Exchange Bank,.....    | 750,000 00   | .....    | 1,191 78 | 3 months, 24 days.  |
| National Bank,.....               | 750,000 00   | .....    | 2,406 25 | 7 months, 21 days.  |
| Bank of New-York,.....            | 1,000,000 00 | .....    | 2,500 00 | 6 months.           |
| Phoenix Bank,.....                | 500,000 00   | .....    | 1,102 74 | 5 months, 8 days.   |
| Union Bank,.....                  | 1,000,000 00 | .....    | 4,347 22 | 10 months, 13 days. |
| Tradesmen's Bank,.....            | 400,000 00   | .....    | 1,000 00 | 6 months.           |
| NIAGARA COUNTY.                   |              |          |          |                     |
| Lockport Bank,.....               | 100,000 00   | 443 06   | 500 00   | 10 months, 19 days. |
| ONEIDA COUNTY.                    |              |          |          |                     |
| Bank of Utica,.....               | 600,000 00   | 2,500 00 | 3,000 00 | Whole year.         |
| ONONDAGA COUNTY.                  |              |          |          |                     |
| Onondaga County Bank,.....        | 150,000 00   | 187 50   | 750 00   | 3 months.           |

| COUNTIES.                            |  | Capital.     | Contributions of 1830-1. | Contributions of 1831-2. | Time of contribution for first payment by each bank. |
|--------------------------------------|--|--------------|--------------------------|--------------------------|--|
| <b>ONTARIO COUNTY.</b>               |  |              |                          |                          |  |
| Bank of Geneva,.....                 |  | \$400,000 00 | \$2,000 00               | \$2,000 00               | Whole year.  |
| Ontario Bank,.....                   |  | 500,000 00   | 2,500 00                 | 2,500 00                 | do.  |
| <b>ORANGE COUNTY.</b>                |  |              |                          |                          |  |
| Bank of Newburgh,.....               |  | 140,000 00   | 616 67                   | 700 00                   | Whole yr. on \$120,000<br>1 mo. 20 da. on 20,000     |
| <b>OSWEGO COUNTY.</b>                |  |              |                          |                          |  |
| Oswego Bank,.....                    |  | 150,000 00   | .....                    | 211 64                   | 103 days.<br>\$140,000                               |
| <b>OTSEGO COUNTY.</b>                |  |              |                          |                          |  |
| Central Bank,.....                   |  | 120,000 00   | 497 75                   | 600 00                   | 303 days.  |
| Otsego County Bank,.....             |  | 100,000 00   | 72 63                    | 500 00                   | 52 days.   |
| <b>RENSSELAER COUNTY.</b>            |  |              |                          |                          |  |
| Farmers' Bank,.....                  |  | 278,000 00   | 1,390 00                 | .....                    | Whole year.  |
| Mechanics' and Mechanics' Bank,..... |  | 300,000 00   | 1,312 50                 | .....                    | 10 months, 15 days.                                  |
| Bank of Troy,.....                   |  | 440,000 00   | 1,943 34                 | 2,200 00                 | 10 months, 18 days.                                  |
| <b>SARATOGA COUNTY.</b>              |  |              |                          |                          |  |
| Saratoga County Bank,.....           |  | 100,000 00   | 41 67                    | 500 00                   | 1 month.   |
| <b>SCHENECTADY COUNTY.</b>           |  |              |                          |                          |  |
| Mohawk Bank,.....                    |  | 165,000 00   | 825 00                   | 825 00                   | Whole year.  |

|                             |                        |                    |                    |                     |  |
|-----------------------------|------------------------|--------------------|--------------------|---------------------|--|
| <b>ST. LAWRENCE COUNTY.</b> |                        |                    |                    |                     |  |
| Ogdensburgh Bank,.....      | 100,000 00             | 437 00             | 500 00             | 10 months, 15 days. |  |
| <b>TOMPKINS COUNTY.</b>     |                        |                    |                    |                     |  |
| Bank of Ithaca,.....        | 200,000 00             | 791 67             | 1,000 00           | 9 months, 15 days.  |  |
| <b>ULSTER COUNTY.</b>       |                        |                    |                    |                     |  |
| Ulster County Bank,.....    | 100,000 00             | .....              | 100 00             | 2 months, 11 days.  |  |
| <b>WASHINGTON COUNTY.</b>   |                        |                    |                    |                     |  |
| Whitehall Bank,.....        | 100,000 00             | .....              | 142 46             | 3 months, 12 days.  |  |
| <b>WAYNE COUNTY.</b>        |                        |                    |                    |                     |  |
| Wayne County Bank,.....     | 100,000 00             | 350 68             | 500 00             | 8 months, 11 days.  |  |
| <b>YATES COUNTY.</b>        |                        |                    |                    |                     |  |
| Yates County Bank,.....     | 100,000 00             | .....              | 145 84             | 3 months, 12 days.  |  |
|                             | <u>\$18,555,800 00</u> | <u>\$26,983 67</u> | <u>\$58,999 70</u> |                     |  |





**No. 24.**

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**IN SENATE,**

**January 27, 1832**

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**REPORT**

**Of the Committee on Claims, on the petition of John Pratt and Matthew Pratt.**

Mr. Sherman, from the committee on claims, to whom was referred the petition of John Pratt and Matthew Pratt,

**REPORTED :**

That the petitioners claim from the State seventy-eight dollars forty-five cents, being a balance of the proceeds of a sale of a lot of land of theirs by the State, under the following circumstances : The lot consists of twenty-five acres, being part of lot No. 44, in the East-Hill tract, in New-Stockbridge, and was originally purchased from the Surveyor-General of the State, by one David Manchester, for the sum of \$112.50—fourteen dollars and fifty cents of which was paid down at the time, and he received the usual certificate, dated 20th May, 1824.

Morehouse sold and assigned his interest in the lot on the 20th February, 1826, to one Pyune Tower, and he, on the 17th July, 1828, duly assigned the same to your petitioners, John and Matthew Pratt.

The petitioners, after having entered into an agreement to sell the premises to Orsamus Pratt, discovered that they were advertised for sale by the Surveyor-General, for non-payment of interest due for the same—and as the said Orsamus Pratt preferred taking a title directly from the State, he concluded to let the sale proceed and attend on the day and bid it off; not supposing that it would sell for more than the balance due the State. But unexpectedly he found that he had to encounter a competition, and was obliged to

bid up to 225 dollars before it was struck down to him. This sum the petitioners paid, believing that the surplus would be refunded to them, according to law, whenever the same should be called for.

That in June 1831, the petitioners made application to the Comptroller for the surplus, and was informed by him, that after deducting \$146.50, due the State for interest and costs, there was due to them the said balance of \$78.45; but that as the law authorising the payment over of surplus moneys had been repealed at the last session of the Legislature, he was not authorised to pay the same; and therefore declined doing it without an act of the Legislature for that purpose.

The committee being satisfied as to the truth of the foregoing facts from inquiry and the accompanying documents, see no reason why the balance claimed should not be refunded to the petitioners; or as they have intimated in their petition, endorsed on the bond held by the State, against Orsamus Pratt.

Accordingly the committee have prepared a bill to that effect, and ask for leave to introduce the same.

No. 25.

## IN SENATE,

January 27, 1832.

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### REPORT

Of the Comptroller, relative to the loans of 1786, 1792 and 1808, in obedience to a resolution of the Senate.

STATE OF NEW-YORK, }  
COMPTROLLER'S OFFICE. }

The Comptroller, in obedience to a resolution of the Honorable the Senate in the following words:

"STATE OF NEW-YORK, }  
"In Senate, Jan. 17, 1832. }

"Resolved, That the Comptroller be requested to report to the Senate the amount outstanding of the loans of 1786, 1792 and 1808, in each county of the State, the deficiency if any exists, and to whom chargeable; also the amount of fees paid annually to the loan officers and commissioners respectively; and the interest received from them respectively during the last year.

"By order,

"JOHN F. BACON, *Clerk.*"

### RESPECTFULLY REPORTS:

That the statements annexed marked A, B, C, exhibit the information called for as far as it has been practicable to give it without entering into a detail of remarks in relation to each loan, which would be rather tedious than useful. The statement A, shows the names of the counties yet retaining any portion of the loan of 1786; the amount of principal standing charged to each county upon the books of this office; the amount of interest paid by each county during the last year, and the amount of interest in arrear against each county at the present time, as shown by these books. To the state-

ment is added a column of concise remarks, indicating the state of the accounts and the supposed cause of the arrears, where any exist. This loan was, by the act chapter 244 of 1820, put into the charge of the same officers having the charge of the loan of 1792; and the salaries payable for the management of this loan were from that time discontinued. No part of the fees or salaries of the officers who now have the care of this loan is therefore chargeable to it, but the whole is made a charge by way of salary to the loan of 1792.

Statement B conveys the same information with respect to the loan of 1792, with the addition of a column showing the amount paid for salaries to the loan-officers of each county, the whole of which are made chargeable upon this loan.

Both these loans were made chargeable to the counties, and still remain so chargeable unless section 46 of title 2, chapter 12 of the 1st part of the Revised Statutes was designed to release this responsibility of the counties, and to render the State the loser, in case losses should happen. The views of the Comptroller upon this subject, will be found in pages 19 and 20 of his annual report, communicated to the Assembly on 17th January, 1831, and to that report he respectfully refers.

Statement C gives the situation of the loan of 1808, as derived from the books of this office in the same order and after the same manner with the other statements. This loan is in the charge of the commissioners for loaning money of the several counties, and their compensation is one per cent annually upon the moneys in their charge. No entry of their compensation is therefore made upon the books of this office of their fees or salaries, but they are annually charged with interest at the rate of six per cent upon their several loans, and by collecting seven per cent, their compensation is left in their hands and does not appear in the accounts.

The remarks in the respective statements, will show the necessity of some legislation in relation to all these loans, to render it possible to reconcile the numerous discrepancies existing between the accounts kept in this office and the accounts of the loan-officers, and commissioners for loaning money of many of the counties, and to authorise credits to be given in certain cases where equity seems clearly to require that they should be given.

But as the Comptroller, in his three annual reports, has given all the cases which seem to him to require the action of the Legislature, with his reasons for the respective suggestions, a repetition of those views and opinions cannot be now required.

An application is now before the Senate for the passage of a law to authorise a final close of the loan of 1792 to the city and county of New-York, upon the ground that the salaries to the officers consume most of the interest upon the loan in its present reduced state. It will be seen by statement B, that the salaries in that case are about two-thirds of the whole amount of annual interest; and also, that there is a question whether the county shall pay an arrear of interest of between one and two hundred dollars, arising from the inability of the loan officers to loan the moneys in their hands. Provision ought to be made for both of the cases, if a final close of the loan is provided for. It may also be well to bring the attention of the Legislature to the fact, that re-loans of principal moneys paid in upon either of the loans are now prohibited by the act, chap. 91, of 1829, and that the amounts of principal outstanding are rapidly diminishing by payments into the treasury. The time, therefore, is not probably distant when the salaries of the loan officers will be greatly disproportionate to the sums remaining in their hands upon loan, and will consume a large share of the annual interest accruing. Still the trouble of these officers will not be diminished in proportion to the diminution of the capitals of the loans to their counties, and it will become necessary to provide some means by which these old loans may be finally closed without continuing from year to year the payment of salaries, when those salaries shall approximate to an equality with the interest collected. It may not be necessary to make this general provision at this time, but as the subject is under the consideration of the Senate, in the case of a single county, it can not be injurious that a more extended view of the approaching necessity of similar action in relation to the whole loan should be taken.

All of which is respectfully submitted.

SILAS WRIGHT, JR.

*Dated Albany, January 27, 1832.*

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( A. )

**STATEMENT**, showing the names of the Counties retaining portions of the loan of 1786, the amount of principal retained by each County, the amount of interest paid in 1831, and the amount of interest in arrear.

| COUNTIES.              | LOAN OF 1786.  |                        |                     | REMARKS.  |
|------------------------|----------------|------------------------|---------------------|---|
|                        | Principal due. | Interest paid in 1831. | Interest in arrear. |   |
| Dutchess county, ..... | \$350 00       | \$14 91                | \$149 02            | <p>There is a difference between the account kept in this office, and that kept by the Loan-officers, existing before the present Loan-officers were appointed, and its settlement must determine to whom any deficiency is chargeable.</p> <p>The apparent arrear upon this loan arises from the fact that the Loan-officers have suffered the payments upon this and the loan of 1792 to become blended together. The interest on the latter loan is overpaid.</p> <p>The cause of arrear in this case not known, but supposed to arise from some confusion between this and the loan of 1792, as there is a small overpayment upon the latter loan.</p> <p>No arrear. (See remark as to loan of 1792 to this county.)</p> <p>Nothing is known in relation to the situation of the balance of this loan, or the cause of the great arrear of interest, compared with the principal due.</p> |
| Orange county, .....   | 3,519 68       | 1,210 75               | 385 19              |   |
| Putnam county, .....   | 61 33          | .....                  | 29 93               |   |
| Queens county, .....   | 530 01         | 67 30                  | .....               |   |
| Richmond county, ..... | 58 57          | .....                  | 96 81               |   |



| COUNTIES.                 | LOAN OF 1786.  |                        |                     | REMARKS.  |
|---------------------------|----------------|------------------------|---------------------|---|
|                           | Principal due. | Interest paid in 1831. | Interest in arrear. |   |
| Suffolk county, .....     | 149 39         | \$30 54                | \$81 98             | There is a difference between the account kept in this office and that kept by the Loan officers, in relation to this arrear, and the Loan-officers claim that nothing is due.<br>There is a difference of both interest and principal between the accounts kept in this office and that kept by the Loan-officers, and they claim that their account is correct; but a settlement only can determine the arrear, if any, and to whom chargeable. |
| Westchester county, ..... | 1,674 43       | 183 22                 | 253 71              |   |
|                           | \$6,353 41     |                        |                     |   |

( B. )

**STATEMENT**, giving the names of the counties holding portions of the loan of 1792, the amounts of principal held by each county, the amounts of interest paid by each in 1831, the amounts of interest in arrear in each case, and the salaries paid to the Loan-officers of each county.

| COUNTIES.         | LOAN OF 1792.  |                        |                     |           | REMARKS.  |
|-------------------|----------------|------------------------|---------------------|-----------|---|
|                   | Principal due. | Interest paid in 1831. | Interest in arrear. | Salaries. |   |
| Albany, .....     | \$9,564 91     | \$813 81               | .....               | \$170 00  | No arrear.  |
| Columbia, .....   | 25,847 25      | 1,906 90               | \$45 35             | 155 00    | No difficulty known to exist. Arrears supposed to be in collection.   |
| Clinton, .....    | 3,265 63       | 187 70                 | 57 30               | 100 00    | Same remark.  |
| Dutchess, .....   | 22,695 50      | 2,172 24               | 393 21              | 170 00    | Supposed to be losses chargeable to the county, but if chargeable to the Loan-officers, it is not known to whom.  |
| Herkimer, .....   | 4,513 50       | 380 77                 | 1,037 19            | 100 00    | This arrear is in a train of collection under the direction of the supervisors of the county, but the Loan-officers to whom it is chargeable are not known.                       |
| Kings, .....      | 1,600 00       | 168 00                 | .....               | 50 00     | No arrear.  |
| Montgomery, ..... | 80,133 50      | 1,525 41               | .....               | 125 00    | No arrear.  |
| New-York, .....   | 4,512 50       | 315 18                 | 126 03              | 200 00    | This arrear was occasioned many years ago, by the inability of the officers to loan the money, and the county decline to raise, and contend they ought not to be charged with it. |

C. C. 231.

| COUNTIES.         | LOAN OF 1792.  |                        |                     |          | REMARKS.  |
|-------------------|----------------|------------------------|---------------------|----------|---|
|                   | Principal due. | Interest paid in 1831. | Interest in arrear. | Salary.  |   |
| Orange, .....     | \$16,059 69    | \$3,242 86             | .....               | \$160 00 | No arrear. See remark upon loan of 1786 to this county.   |
| Otsego, .....     | 3,809 42       | 319 30                 | .....               | 100 00   | No arrear.  |
| Ontario, .....    | 2,550 00       | 214 00                 | .....               | 100 00   | No arrear.  |
| Putnam, .....     | 9,015 50       | 683 32                 | .....               | 80 00    | No arrear. See remark in relation to loan of 1786 to this county.   |
| Queens, .....     | 4,671 50       | 485 12                 | \$50 37             | 90 00    | This arrear is presumed to arise from having blended the payments upon this and the loan of 1786, but no knowledge is possessed upon the subject.   |
| Rensselaer, ..... | 27,459 47      | 2,102 10               | .....               | 175 00   | No arrear.  |
| Richmond, .....   | 3,112 50       | 288 18                 | 21 86               | 50 00    | The cause of this arrear is not known, nor is it known whether it is chargeable to the Loan-officers or the county.   |
| Rockland, .....   | 5,202 03       | 395 53                 | 211 98              | 45 00    | There is believed to be a difference between the account kept in this office and that kept by the Loan-officers, as to both principal and interest of this loan, but no explanation of it has yet been had. |
| Suffolk, .....    | 6,329 36       | 552 60                 | .....               | 100 00   | No arrear.  |
| Saratoga, .....   | 22,896 42      | 1,677 16               | .....               | 125 00   | No arrear.  |
| Tioga, .....      | 6,200 13       | 446 15                 | 14 25               | 100 00   | This arrear presumed to be in collection, as no confusion is known to exist between the accounts.   |

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No arrear.  
 No arrear.  
 This arrear is presumed to be in collection, as  
 no difficulty is known in relation to the ac-  
 counts.

165 00  
 150 00  
 175 00

.....  
 .....  
 56 68

1,233 28  
 1,150 95  
 2,056 16

16,737 50  
 13,813 76  
 28,380 75  
 \$258,940 84

Ulster, .....  
 Westchester, .....  
 Washington, .....

( C. )

**STATEMENT**, giving the names of the counties holding portions of the loan of 1808, the amounts of principal standing charged against each county, the payments for interest in 1831, and the balances of interest in arrear, as shown by the books of the Comptroller's office.

| COUNTIES.          | LOAN OF 1808.  |                        |                     | REMARKS.   |
|--------------------|----------------|------------------------|---------------------|--|
|                    | Principal due. | Interest paid in 1831. | Interest in arrear. |  |
| Albany, .....      | \$10,106 00    | \$627 42               | \$85 71             | There is a trifling difference in the accounts as to this loan, but not equal to the present arrear, which is presumed to be partially, at least, in collection.<br>The arrear in this case grows out of the default of a late commissioner, who is insolvent, but whose bail are said to be responsible. Luke Goodspeed was the commissioner. |
| Allegany, .....    | 1,769 43       | 61 00                  | 402 08              |  |
| Broome, .....      | 5,620 00       | 358 26                 | .....               | No arrear.   |
| Columbia, .....    | 12,505 00      | 758 15                 | 57 00               | This arrear is presumed to be in collection, as there has hitherto been no difficulty with the accounts.   |
| CClinton, .....    | 4,053 00       | 250 56                 | .....               | No arrear.   |
| Chemung Co., ..... | 14,273 00      | 843 10                 | 125 80              | This arrear is supposed to grow out of the purchase for the State of certain mortgaged premises, which have not been released, and are not therefore credited.   |
| Cayuga, .....      | 15,431 25      | 1,103 84               | .....               | No arrear.   |

|                  |            |          |          |  |
|------------------|------------|----------|----------|--|
| Cortland, .....  | \$3,662 00 | \$350 52 | \$115 78 | The reason for this arrear is not known, but probably most or all of it is in collection.  |
| Dutchess, .....  | 18,014 15  | 1,101 57 | 1,339 56 | A very considerable part of this arrear is the interest of the past year, presumed to be in collection, and the residue is supposed to be chargeable to the present commissioners.   |
| Delaware, .....  | 9,951 00   | 608 00   | .....    | No arrear.   |
| Essex, .....     | 4,505 40   | 291 59   | 142 87   | There is not understood to be any difficulty with this account, and the arrear is supposed to be chargeable to the present commissioners.  |
| Franklin, .....  | 1,242 75   | 82 95    | 227 59   | This arrear is principally a default of the late commissioners, Wm. Baily and J. H. Russell, who have been prosecuted, but they are both insolvent, and the bail of both are dead or insolvent. There is a small default against the subsequent commissioners. The present commissioners are not in default. |
| Greene, .....    | 9,031 00   | 555 12   | 8 10     | This small balance must be in collection, as no difficulty exists with this account.   |
| Genesee, .....   | 6,434 00   | 388 00   | 9 91     | This small arrear is presumed to be in collection, as no difficulty in the account is known to exist.  |
| Herkimer, .....  | 12,318 00  | 816 80   | 729 66   | This arrear is supposed to be in the hands of the late commissioners, Lawyer and Small, with the exception of 88 dollars, in the hands of the predecessors of Lawyer and Small. Measures are taking to collect both arrears.   |
| Jefferson, ..... | 8,963 77   | 604 28   | .....    | No arrear.   |
| Lewis, .....     | 5,513 00   | 342 08   | .....    | No arrear.   |

| COUNTIES.             | LOAN OF 1868.  |                        |                     | REMARKS.   |
|-----------------------|----------------|------------------------|---------------------|--|
|                       | Principal due. | Interest paid in 1868. | Interest in arrear. |  |
| Montgomery, . . . .   | \$19,530 94    | \$1,166 90             | \$2,352 90          | This arrear is supposed to be chargeable to the present commissioners, and their bonds are to be put in suit without delay, and are believed to be good.   |
| Madison, . . . . .    | 13,290 00      | 878 00                 | 5 02                | This small arrear is presumed to be in collection, as no difficulty with the account is known.   |
| Orange, . . . . .     | 9,379 00       | 770 50                 | 309 78              | This arrear proceeds from the purchase for the State of mortgaged premises to the amount of \$300, which have not been released, and therefore not credited, and from a small remaining default against the present commissioner, Belknap. |
| Otsego, . . . . .     | 21,134 25      | 1,395 34               | .....               | No arrear.   |
| Ontario, . . . . .    | 22,014 00      | 1,200 00               | 219 84              | This arrear is presumed to be in collection, as no difficulty is known to exist in the account.  |
| Oneida, . . . . .     | 17,369 00      | 1,213 38               | 49 65               | The same.  |
| Onondaga, . . . . .   | 12,312 00      | 779 25                 | 76 68               | The same.  |
| Putnam, . . . . .     | 4,682 00       | 332 20                 | 54 56               | The same.  |
| Richmond, . . . . .   | 1,480 00       | 123 80                 | 65 70               | Most of this arrear is alleged to proceed from the inability of the commissioners to loan the money.   |
| Rensselaer, . . . . . | 15,770 50      | 1,037 13               | .....               | No arrear.   |
| Rockland, . . . . .   | 1,295 00       | 95 80                  | .....               | No arrear.   |
| Saratoga, . . . . .   | 15,514 00      | 1,055 28               | .....               | No arrear.   |

|                    |                     |          |        |   |
|--------------------|---------------------|----------|--------|---|
| Schoharie, .....   | 10,799 00           | 598 63   | 183 00 | This arrear is presumed to arise from the fact that a suit is now pending upon the covenants in a mortgage, where the premises have been bid in, but not released.  |
| Seneca, .....      | 6,673 00            | 477 16   | .....  | No arrear.  |
| Steuben, .....     | 4,273 00            | 267 72   | 100 23 | This arrear is stated to arise from the fact that \$517 remained unloaned for two years, there being no commissioners, and from a loss, by entire failure of title, of one mortgage of \$107.   |
| St. Lawrence, .... | 3,313 00            | 210 72   | 249 74 | This arrear is chargeable to Russell Atwater and Alexander Richards, former commissioners, and the most of it is in judgment against the bail of Atwater, which cannot be collected.  |
| Tioga, .....       | 4,872 34            | 328 62   | 379 39 | This arrear is supposed to be chargeable to the present commissioners, as no difficulty is known to exist with the accounts. The commissioners have repeatedly promised to see the account balanced.  |
| Ulster, .....      | 10,828 00           | 734 04   | .....  | No arrear.  |
| Washington, .....  | 17,004 50           | 1,146 12 | 116 84 | This arrear arises from the fact that the premises upon two mortgages have been bought in for the State, but have not yet been credited, there being a difficulty in bringing the cases within the provisions of the present law directing these credits. |
|                    | <u>\$354,926 28</u> |          |        |   |





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**No. 26.**

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**IN SENATE,**

**January 23, 1832.**

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**ANNUAL REPORT**

**Of the Trustees of the Sailors' Snug Harbor.**

**TO THE HONORABLE THE SENATE OF THE STATE  
OF NEW-YORK.**

*New-York, January, 1832.*

In presenting to your Honorable Body the annual accounts of the Trustees of the Sailors' Snug Harbor, I beg leave to inform you that the Trustees, with the approbation of his honor the Chancellor, have purchased a farm containing one hundred and forty-seven acres, lying on the north side of Staten Island, affording an eligible site for the Asylum. The Trustees have built a dock on the premises, and have commenced the main building, (for the Asylum for aged and worn out seamen,) sixty-five by one hundred feet.

The Trustees keeping constantly in view the intentions of the founder of this institution, have pleasure in using their best exertions in putting them shortly in useful operation.

**WALTER BOWNE, *President.***

**[S. No. 26.]**

**1**

1. The first part of the paper discusses the importance of the study of the history of the United States.

2. The second part of the paper discusses the importance of the study of the history of the United States.

3. The third part of the paper discusses the importance of the study of the history of the United States.

4. The fourth part of the paper discusses the importance of the study of the history of the United States.

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7. The seventh part of the paper discusses the importance of the study of the history of the United States.

8. The eighth part of the paper discusses the importance of the study of the history of the United States.

9. The ninth part of the paper discusses the importance of the study of the history of the United States.

10. The tenth part of the paper discusses the importance of the study of the history of the United States.

# ANNUAL REPORT, &c.

A Statement of the transactions of the Sailors' Snug Harbor, from 31st December, 1830, to 31st December, 1831, together with a Statement of their funds and annual income, as they now exist.

|   |                    |
|---|--------------------|
| Cash, balance on hand per statement of 31st December, 1830, ..... | \$1,187 36         |
| Received during the year 1831, viz:                               |                    |
| for dividends on stock, .....                                     | \$3,469 84         |
| interest on bonds and mortgages, .....                            | \$,394 38          |
| interest on outstanding balances, .....                           | 31 41              |
| Peter Davy's 2 notes for \$153 each, .....                        | 306 00             |
| materials of an old building sold, .....                          | 20 00              |
| rent outstanding to 1st November, 1830, .....                     | 1,327 16           |
| rent from 1st November, 1830, to 1st November, 1831, .....        | 7,586 87           |
| state 6 per cent stock, .....                                     | \$4,000 00         |
| sold at 11 per cent premium, .....                                | 440 00             |
| bonds and mortgages paid off, .....                               | 4,440 00           |
|   | 9,042 00           |
|   | <u>29,617 66</u>   |
|   | <u>\$30,805 02</u> |

| COUNTIES.                 | LOAN OF 1786.  |                        |                     | REMARKS.  |
|---------------------------|----------------|------------------------|---------------------|---|
|                           | Principal due. | Interest paid in 1851. | Interest in arrear. |   |
| Suffolk county, .....     | 149 39         | \$30 54                | \$81 98             | There is a difference between the account kept in this office and that kept by the Loan officers, in relation to this arrear, and the Loan-officers claim that nothing is due.  |
| Westchester county, ..... | 1,674 43       | 183 22                 | 253 71              | There is a difference of both interest and principal between the accounts kept in this office and that kept by the Loan-officers, and they claim that their account is correct; but a settlement only can determine the arrear, if any, and to whom chargeable. |
|                           | \$6,353 41     |                        |                     |   |

( B. )

**STATEMENT**, giving the names of the counties holding portions of the loan of 1792, the amounts of principal held by each county, the amounts of interest paid by each in 1831, the amounts of interest in arrear in each case, and the salaries paid to the Loan-officers of each county.

| COUNTIES.         | LOAN OF 1792.  |                        |                     |          | REMARKS.  |
|-------------------|----------------|------------------------|---------------------|----------|---|
|                   | Principal due. | Interest paid in 1831. | Interest in arrear. | Salary.  |   |
| Albany, .....     | \$9,564 91     | \$813 81               | .....               | \$170 00 | No arrear.  |
| Columbia, .....   | 25,847 25      | 1,806 80               | \$45 35             | 135 00   | No difficulty known to exist. Arrears supposed to be in collection.   |
| Clinton, .....    | 3,265 63       | 187 70                 | 57 30               | 100 00   | Same remark.  |
| Dutchess, .....   | 22,695 50      | 2,172 24               | 393 21              | 170 00   | Supposed to be losses chargeable to the county, but if chargeable to the Loan-officers, it is not known to whom.  |
| Herkimer, .....   | 4,513 50       | 380 77                 | 1,037 19            | 100 00   | This arrear is in a train of collection under the direction of the supervisors of the county, but the Loan-officers to whom it is chargeable are not known.                       |
| Kings, .....      | 1,600 00       | 168 00                 | .....               | 50 00    | No arrear.  |
| Montgomery, ..... | 80,153 50      | 1,535 41               | .....               | 125 00   | No arrear.  |
| New-York, .....   | 4,512 50       | 315 18                 | 126 03              | 200 00   | This arrear was occasioned many years ago, by the inability of the officers to loan the money, and the county decline to raise, and contend they ought not to be charged with it. |

| COUNTIES.         | LOAN OF 1792.  |                        |                     |          | REMARKS.  |
|-------------------|----------------|------------------------|---------------------|----------|---|
|                   | Principal due. | Interest paid in 1831. | Interest in arrear. | Salary.  |   |
| Orange, .....     | \$16,059 69    | \$2,242 86             | .....               | \$160 00 | No arrear. See remark upon loan of 1786 to this county.   |
| Otsego, .....     | 3,809 42       | 319 30                 | .....               | 100 00   | No arrear.  |
| Ontario, .....    | 2,550 00       | 214 00                 | .....               | 100 00   | No arrear.  |
| Putnam, .....     | 9,015 50       | 683 32                 | .....               | 80 00    | No arrear. See remark in relation to loan of 1786 to this county.   |
| Queens, .....     | 4,671 50       | 485 12                 | \$50 37             | 90 00    | This arrear is presumed to arise from having blended the payments upon this and the loan of 1786, but no knowledge is possessed upon the subject.   |
| Rensselaer, ..... | 27,459 47      | 2,102 10               | .....               | 175 00   | No arrear.  |
| Richmond, .....   | 3,112 50       | 238 18                 | 21 36               | 50 00    | The cause of this arrear is not known, nor is it known whether it is chargeable to the Loan-officers or the county.   |
| Rockland, .....   | 5,202 03       | 395 53                 | 211 96              | 45 00    | There is believed to be a difference between the account kept in this office and that kept by the Loan-officers, as to both principal and interest of this loan, but no explanation of it has yet been had. |
| Suffolk, .....    | 6,329 38       | 552 60                 | .....               | 100 00   | No arrear.  |
| Saratoga, .....   | 22,895 42      | 1,677 16               | .....               | 125 00   | No arrear.  |
| Tioga, .....      | 6,200 13       | 446 15                 | 14 25               | 100 00   | This arrear presumed to be in collection, as no confusion is known to exist between the accounts.   |

Ulster, .....  
Westchester, .....  
Washington, .....  
\$258,940 84

16,737 50  
13,813 76  
28,380 75  
\$258,940 84

1,233 28  
1,150 95  
2,056 16

.....  
.....  
56 68

165 00  
150 00  
175 00

No arrear.  
No arrear.  
This arrear is presumed to be in collection, as  
no difficulty is known in relation to the ac-  
counts.



( C. )

**STATEMENT**, giving the names of the counties holding portions of the loan of 1808, the amounts of principal standing charged against each county, the payments for interest in 1831, and the balances of interest in arrear, as shown by the books of the Comptroller's office.

| COUNTIES.       | LOAN OF 1808.  |                        |                     | REMARKS.   |
|-----------------|----------------|------------------------|---------------------|--|
|                 | Principal due. | Interest paid in 1831. | Interest in arrear. |  |
| Albany, .....   | \$10,106 00    | \$627 42               | \$85 71             | There is a trifling difference in the accounts as to this loan, but not equal to the present arrear, which is presumed to be partially, at least, in collection.           |
| Allegany, ..... | 1,769 43       | 61 00                  | 402 08              | The arrear in this case grows out of the default of a late commissioner, who is insolvent, but whose bail are said to be responsible. Luke Goodspeed was the commissioner. |
| Broome, .....   | 5,620 00       | 358 26                 | .....               | No arrear.   |
| Columbia, ..... | 12,505 00      | 758 15                 | 57 00               | This arrear is presumed to be in collection, as there has hitherto been no difficulty with the accounts.   |
| Clinton, .....  | 4,053 00       | 250 56                 | .....               | No arrear.   |
| Chenango, ..... | 14,273 00      | 843 10                 | 125 80              | This arrear is supposed to grow out of the purchase for the State of certain mortgaged premises, which have not been released, and are not therefore credited.             |
| Cayuga, .....   | 15,431 25      | 1,103 84               | .....               | No arrear.   |

|                  |            |          |          |  |
|------------------|------------|----------|----------|--|
| Cortland, .....  | \$3,662 00 | \$330 52 | \$115 78 | The reason for this arrear is not known, but probably most or all of it is in collection.  |
| Dutchess, .....  | 18,014 15  | 1,101 57 | 1,339 56 | A very considerable part of this arrear is the interest of the past year, presumed to be in collection, and the residue is supposed to be chargeable to the present commissioners.   |
| Delaware, .....  | 9,951 00   | 608 00   | .....    | No arrear.   |
| Essex, .....     | 4,505 40   | 291 59   | 142 87   | There is not understood to be any difficulty with this account, and the arrear is supposed to be chargeable to the present commissioners.  |
| Franklin, .....  | 1,242 75   | 82 95    | 227 59   | This arrear is principally a default of the late commissioners, Wm. Baily and J. H. Russell, who have been prosecuted, but they are both insolvent, and the bail of both are dead or insolvent. There is a small default against the subsequent commissioners. The present commissioners are not in default. |
| Greene, .....    | 9,031 00   | 555 12   | 8 10     | This small balance must be in collection, as no difficulty exists with this account.   |
| Genesee, .....   | 6,494 00   | 388 00   | 9 91     | This small arrear is presumed to be in collection, as no difficulty in the account is known to exist.  |
| Herkimer, .....  | 12,318 00  | 816 80   | 729 66   | This arrear is supposed to be in the hands of the late commissioners, Lawyer and Small, with the exception of 88 dollars, in the hands of the predecessors of Lawyer and Small. Measures are taking to collect both arrears.   |
| Jefferson, ..... | 8,963 77   | 604 28   | .....    | No arrear.   |
| Lewis, .....     | 5,513 00   | 342 06   | .....    | No arrear.   |

The petitioners seek either the absolute conveyance of their respective lots to them on said tract; or that they may have the pre-emption right, on paying the value of the land when settled.

On both of these points your committee are against their claim. We consider these *in pari casu* with several that have heretofore been passed on by the Legislature.

They never had a title or pretence of one, and the only evidence which they show of permission is from an affidavit of an unlettered individual, who makes his mark, and who swears to a conversation with an acknowledged agent, as far back as 1798.

It would, therefore, be doing injustice to the State to give them the land, and would be inconsistent with former acts.

It would also be improper to grant them the pre-emption right at the value of the land when settled, unless the interest thereon was added. They have enjoyed the land, have supported themselves and families thereon, and are in this respect in the same situation, and no better than squatters on State lands.

They therefore recommend that this tract should be divided and appraised, both as to the value of the soil and the improvements thereon, and that the settlers should have the pre-emption right on paying the aforesaid appraised value of the soil.

2d. There are several lots and parts of lots on the St. Regis reservation remaining unsold, to wit: No. 5, W. half, 99 acres; 12, S. E. part, 48 acres; 13, W. part, 78 acres; 16, 202 acres; 20, N. part, 103 acres; 21, W. part, 103 acres; 21, S. E. part, 52 acres; 23, E. 101½ acres; 36, E. 29 acres, and house lot; making in the aggregate 816 acres.

By the act of April 13, 1819, the occupants of the above were entitled to the pre-emption right, on paying the appraised value of the soil within a limited time: on failure of their taking them the lots were to be sold, and the purchaser was to pay the occupants for the improvements, in addition to the purchase money.

These lots were not taken by the occupants, and in consequence of the excessive value of the estimate put on the improvements, and their actually deteriorated value, no purchaser can be found under the

act, and the occupants remain in possession, without paying one cent to the State.

Your committee, therefore, recommend that the soil and improvements be newly appraised, and that the same right of pre-emption be extended to these settlers, and if not accepted, that the several lots be sold to the highest bidder, at a sum not less than the appraised value of the soil, and the overplus, if any, go to the occupant for his improvement.

3d. The lots containing about 60 acres, reserved for military purposes, within the mile square in the St. Regis reservation, were, by acts of the Legislature of last winter, directed to be re-leased for 9 years, which your committee understand has been done; and which renders it at present unnecessary to legislate thereon.

4th. On the last subject contained in the communication of the Surveyor-General, relative to the neglect of the proper officers to file a map in his office, on the division or erection of a county or town, your committee would barely remark, that it seems to be a subject entirely disconnected with the other matters alluded to in his communication, and one which we think ought to be referred to some other than the finance committee.

Your committee ask for leave to bring in a bill, in pursuance of this report, and to be discharged from the further consideration of the last point alluded to.



No. 28.

**IN SENATE,**

**February 1, 1832.**

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**RESOLUTIONS**

**Relative to the United States Bank.**

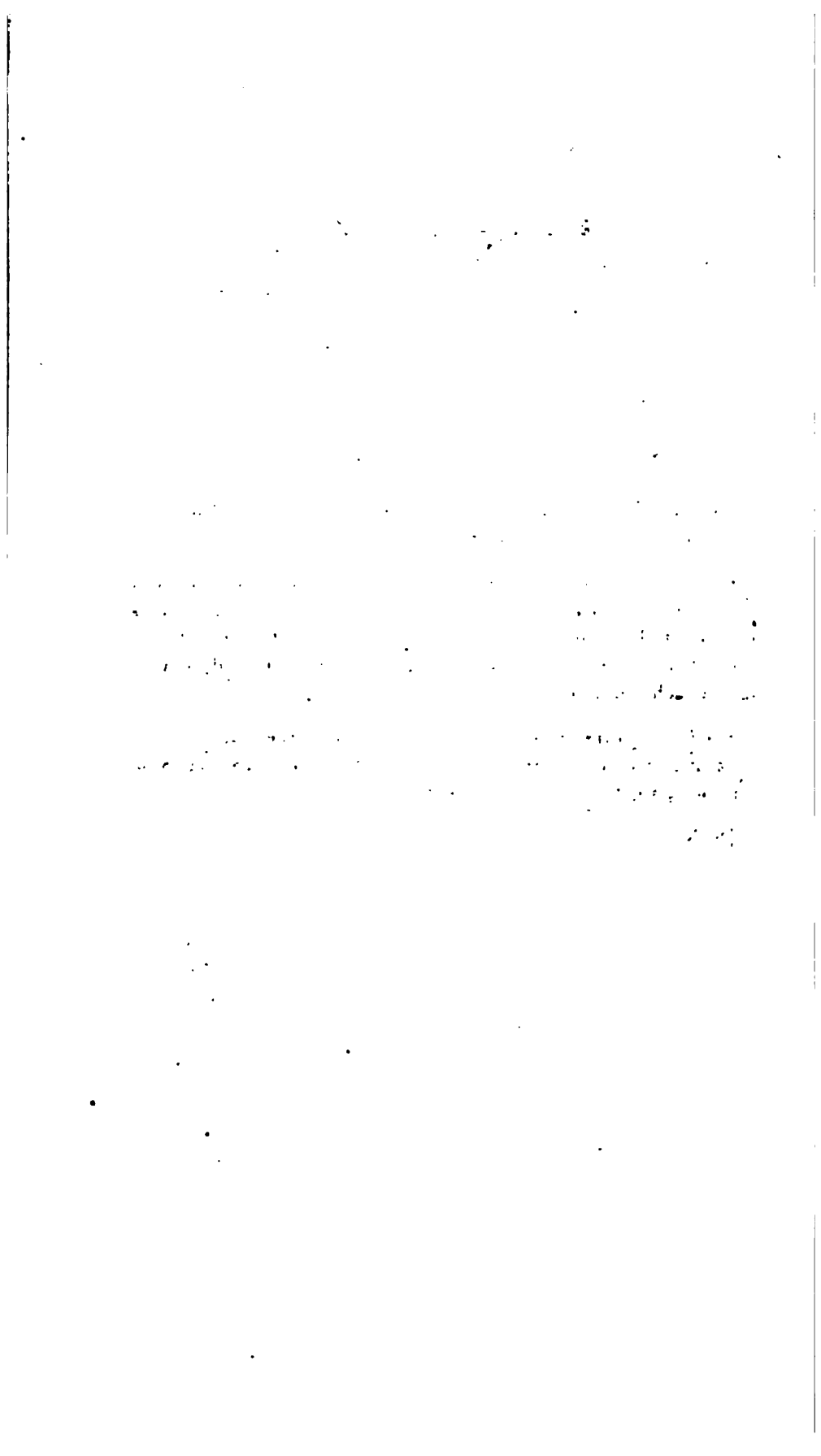
Whereas, the Bank of the United States has applied to Congress for a renewal of its charter: Therefore,

*Resolved*, (if the Assembly concur,) that it is the sentiment of this Legislature that the charter of the Bank of the United States ought not to be renewed: and that our Senators in Congress be instructed, and our Representatives respectfully requested, to vote against such renewal.

*Resolved*, (if the Assembly concur,) that the Secretary of State transmit to each of the Senators and Representatives in Congress of this State, a copy of the foregoing resolution.

[S. No. 28.]

1



**No. 29.**

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**IN SENATE,**

**January 31, 1832.**

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**REPORT**

**Of the Surveyor-General on the petitions of William Hotchkiss, Calvin Hotchkiss and Dennis Harrison, referred to him by the Senate.**

The Surveyor-General, on the several petitions of William Hotchkiss, Calvin Hotchkiss and Dennis Harrison, referred to him by the honorable the Senate,

**RESPECTFULLY REPORTS :**

That they pray for a law authorising the Commissioners of the Land-Office to sell to them the lots in Lewiston, designated in their petitions, for which they offer to give the sums at which they may be fairly appraised, with an addition of ten per cent. The lot designated by William Hotchkiss is out lot No. 24. This lot contains a little exceeding four acres, and lies adjoining to the lot granted to Calvin Hotchkiss, in pursuance of the act, ch. 147 of 1829. It is situated about 14 chains from the house lots, on which the petitioner says he has expended more than \$4,000 in making improvements.

The lots designated by Calvin Hotchkiss are house lots No. 322, 328 and 329; and also out lot No. 22, which lies in their vicinity, and contains between 4 and 5 acres. It was sold in 1816, and in 1820 reverted to the State, at a re-sale of lands for non-payment of arrears.

The lots designated by Dennis Harrison are house lots No. 211 and 212, together with out lot No. 26. The house lots were sold in 1805, and reverted at a re-sale in 1825. The out lot lies about 30 chains from the house lots, and contains 4 acres.

[S. No. 29.]



All the lots proposed to be purchased by the petitioners now belong to the State.

The lots in the village of Lewiston were first offered for sale in the year 1805. At that time all the trade from the great western lakes, eastward to the Atlantic, passed through this place; and the articles of merchandize were here necessarily deposited, either for re-shipment or transportation by land to the navigable waters above the Niagara falls. A respectable trade was then conducted by sailing vessels on the lakes as far west as Chicago, and from Lewiston to Oswego and Ogdensburgh. The great increase of commerce, which was at that time confidently expected, furnished a well founded hope that property here could not fail of increasing rapidly in value. That hopes like these would be disappointed, by such a rival as the Erie canal, could not possibly have been anticipated. Under these circumstances the Commissioners of the Land-Office considered it for the interest of the State to limit the first sale to such parts as were considered sufficient for the accommodation of actual settlers for some time to come.

In 1816, when much incredulity prevailed respecting the construction of the canal, another auction sale was had of the Lewiston lots, and again, for the reasons before mentioned, restricted in its extent; in consequence of which a considerable proportion of the lots laid out in the village were left unsold, and have remained unsaleable in consequence of the decisive measures adopted in 1817, for constructing the canal; and its subsequent completion in a much shorter period of time than the shortest within which the most sanguine calculators believed it practicable.

It has been the practice of the Commissioners of the Land-Office to bring the lands of the State into market whenever a demand for them appeared; but no such demand for the remaining lots at Lewiston having been manifested, since the last public sale, no other has been directed. This statement is deemed necessary to shew the reason why the public property, in the village of Lewiston, is not now for sale at the land-office.

Respectfully submitted.

SIMEON DE WITT, *Surveyor-General.*

*January 30th, 1832.*

**No. 30.**

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**IN SENATE,**

**February 1, 1832.**

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**REPORT**

**Of the select committee, on several petitions for a law regulating the measuring of grain in the city of New-York.**

The select committee, to whom was referred the several petitions of merchants and other dealers in grain, in the towns of Newburgh, New-Windsor and Cornwall in the county of Orange, of Waterford in the county of Saratoga, of Troy and Lansingburgh in the county of Rensselaer, and of the city of Albany, praying for the passage of a law authorizing the appointment of a measurer-general of grain, in the city of New-York,

**REPORTED :**

The petitioners represent, that great dissatisfaction often occurs between the parties in the purchase and sale of grain in the New-York market, both as to the measure and quality of the article ; that there are now about forty measurers of grain in the city of New-York, appointed by city authority, and independent of each other, which of course produces great competition in the business. Each measurer has his striker employed, and from the great number thus concerned, the aggregate of business is inadequate to full support, or constant employment. From these circumstances, it frequently happens that the measurers are employed in and about the stores of dealers in grain, and generally act as agents or brokers in their purchases ; they are therefore supposed not to possess that entire independence and impartiality necessary in the performance of their official duties.

The petitioners further allege, that large parcels of grain are frequently sold by sample, to be delivered at a future day ; that in

[S. No. 30.]

cases where prices have declined before delivery, and the purchaser has found an advantage in evading the contract, he has been enabled to do it, by alleging that the grain produced was inferior to the sample, and his measurer, who seems to be the arbiter in these disputes, uniformly decides in favor of the party to whom he is most indebted for employment and support. Appeals from such decisions are dilatory and expensive, of course seldom resorted to, and the party aggrieved is, in effect, without available redress.

The petitioners also complain that errors in measurement often occur, almost uniformly to the disadvantage of the seller; and that in some instances, where such parcels have been shipped and sold at other ports, the quantity has exceeded largely the New-York measurement.

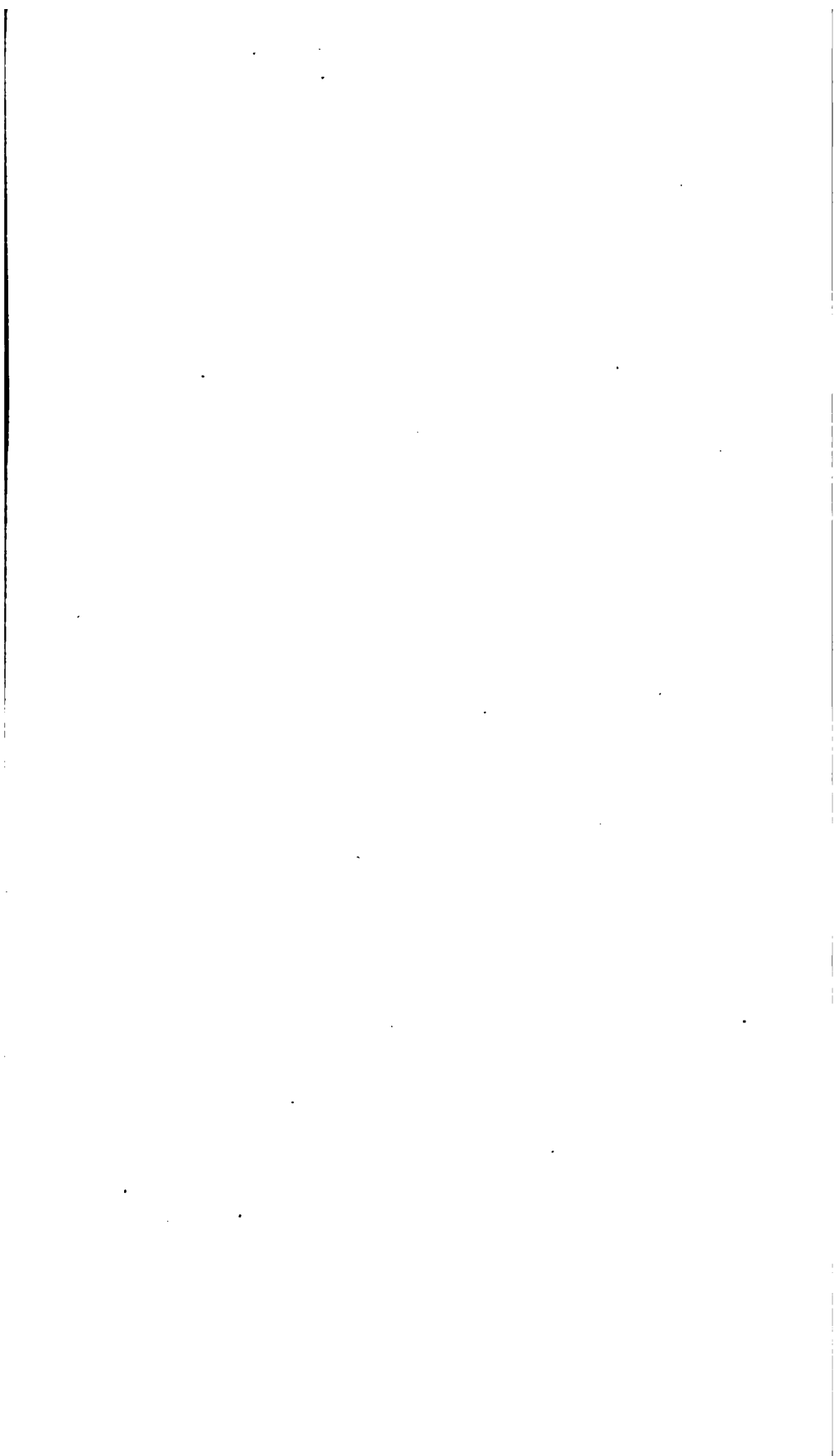
Under these circumstances, the petitioners ask for an act authorising and directing the appointment by the Governor and Senate, of a measurer-general of grain in the city of New-York, with power to appoint deputies or assistants, and defining his other powers and duties.

In the investigation of this subject, your committee has conferred with several gentlemen interested in the purchase and shipments of grain, and others acquainted with the subject, and from the information thus obtained, as well as from the number and respectability of the petitioners, they have become satisfied that the complaints of the petitioners, to a considerable extent, are well founded. But be this as it may, it seems placed beyond all doubt that great dissatisfaction prevails under the present regulations of that very important branch of commerce. There is certainly something in the aspect of these complaints, indicating a jealousy between the dealers in grain in the city and those of the country, which seems to call for more satisfactory arrangements than at present exist. If it be true as the petitioners state, (and the committee has no reason to doubt it,) that it is the common practice of the most considerable dealers in grain in the city of New-York, to find full employment for a particular measurer, either in his official capacity or otherwise, that circumstance alone must be sufficient to raise doubts in a stranger, who has no claims upon his favor or partialities. The measurers of grain are now appointed by the common council of New-York, under the powers contained in their charter, each independent of all others, and without the control of any particular superintending authority by which their duties may be regulated, and questions of

right between dealers in grain promptly and equitably decided. Formerly the inspectors of spirits, ashes, &c., were appointed by the city authorities, but as their duties and powers were not confined exclusively to city interests, but were intended for the general benefit of the State, the appointments have been assumed by the State authorities. The trade in grain is certainly not exclusively a city interest, but its effects are felt in almost every part of the State, except in cases where that article is brought from beyond our limits. It seems, then, proper and necessary, that this interesting branch of our commerce should also be placed under the superintendence of officers appointed by, and accountable to, the government of the State, and that the whole subject should be so ordered and regulated as to secure the full confidence of all our citizens, as well as those of other states who may resort to our markets ; and to afford means for the most prompt and satisfactory correction of errors or impositions, should such at any time exist.

There is, however, a remonstrance, signed by about thirty individuals and companies dealing in grain in the city of New-York, against any variation from the present system ; but the committee has not considered their objections of sufficient weight to justify a longer continuance of the present regulations.

In accordance with their views on this subject, the committee has prepared a bill, regulating the measuring of grain in the city of New-York, and directed their chairman to ask leave to introduce the same.



**IN SENATE,**

**January 30, 1832.**

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**ANNUAL REPORT**

**Of the Inspectors of the State Prison at Auburn.**

*To the Honorable the Legislature of the State of New-York.*

**The Inspectors of the State Prison at Auburn,**

**RESPECTFULLY REPORT :**

That, a law having been passed at the last session of the Legislature, requiring the annual accounts of the prison to be closed on the 30th of September, instead of the 31st of October, as formerly, the present fiscal year embraces only eleven months, viz : from the 1st of November, 1830, to the 30th of September, 1831, inclusive.

During this period, the earnings of the convicts, as charged to the contractors, amounted to..... \$36,209 44

The expenditures during the same period, for the general support and repairs of the prison, (including the amount paid to discharged convicts,) as appears by vouchers rendered to the Comptroller, amounted to 34,405 61

Leaving a balance in favor of the prison, of..... \$1,803 83

The actual receipts during the year, from prison sources, including those from visitors, amounted to..... \$43,752 81

To this must be added the amount in the hands of the agent on the 31st of October, 1830,..... 4,861 79

Deducting the expenditures, as above,..... \$48,614 60  
34,405 61

Leaves a balance in the agent's hands, 30th September, 1831, of..... \$14,208 99

The above statement exhibits the result of the fiscal operations of this prison for the past year, as it appears from the books of the late clerk, Mr. John R. Bodley, who died on the 6th of December last.

It is our duty, however, here to state, that, upon a thorough examination of the books, since Mr. Bodley's decease, we find, towards the close of his official transactions, some important inaccuracies in his accounts, and are constrained to admit the mortifying fact, that there have been cash receipts, of a considerable amount, which are unaccounted for.

These errors are of such a kind, that it is impracticable to exhibit them, in their true light, in this report. We have therefore advised the agent to present the subject, in person, to the Legislature, in order to make the necessary explanations, which he will take the earliest opportunity to do. It is due to the agent to remark, that the circumstances of the case, ought, in our opinion, entirely to exculpate him from censure.

In connexion with this subject, we beg leave to call the attention of the Legislature to what we deem an important defect in the law relating to the clerkship of this prison. To the clerk, as the accounting officer, the pecuniary interests of the institution are, to a certain extent, necessarily entrusted. Funds, to a large amount, and from a great variety of sources, annually pass through his hands, under circumstances which render the accounts so complicated, as to make it difficult to guard completely against peculation, if the clerk be so disposed, and adept in the art, or at once to detect the fraud, when committed, without laborious investigation. Still, under the present law, the agent is the only responsible officer. While he is required to give bonds, in the sum of twenty-five thousand dollars, for the faithful performance of his duties, the clerk, upon whose integrity he is in a great measure dependent for a faithful account of the monied transactions of the institution, is bound by no obligation but his oath. To require the agent thus to hazard his reputation and his estate upon the fidelity of the clerk, appears to us to be palpably unjust. And we beg leave respectfully to suggest, to your honorable body, the expediency and importance of a supplementary provision, requiring the clerk of this prison to give adequate bonds to the agent.

As an additional reason in favor of such a provision, permit us to remark, that it would have a tendency to prevent the possible recur-

rence of the vexatious difficulties occasioned by an affected independence on the part of the clerk, (growing out of the difference of the tenure by which these offices are held,) which has latterly been not a little embarrassing to the agent, in his endeavors to keep the run of the accounts, and to which, together with the late clerk's peculiar method of book-keeping, may be ascribed the deficiencies alluded to above.

In the above amount of expenditures for the past year is included the expense of building a spacious and substantial wood-house, 80 feet long by 28 wide, besides that incurred for the ordinary repairs.

Early in the month of November last, his Excellency the Governor, on being informed that the number of convicts at the Sing-Sing prison considerably exceeded the number of cells, and that the surplus might be better accommodated and more advantageously employed in this prison, ordered sixty to be removed, which was immediately done by the agent of this institution, at an expense not exceeding four hundred dollars.

The number of convicts received during the year ending with the 31st day of December, 1831, including the sixty from Sing-Sing, is 174. (Table No. 1.)

During the same period, 33 have been discharged by pardon, (Table No. 2,) 100 by expiration of sentence, and 15 by death, (Table No. 3.)

On the 1st day of January, 1831, the number in this prison was 620. At the close of the same year, it was 646; showing an increase during the year, including those received from Sing-Sing, of 26; but, exclusive of those, a decrease, in our present prison district, of 34.

It will be seen, from the above statements, that the number now in prison is nearly six hundred and fifty; exceeding the number of solitary cells by about one hundred.

Already the discipline of this prison has suffered, and is suffering, from the necessary contact, in many cases, of two convicts in the same dormitory. And the prospect is, that without some speedy provision to remedy the evil, it will be augmented to such a degree as, in effect, to throw us back upon the old system of unrestrained inter-



course among criminals. From accounts which have reached us of the rapid increase at the Sing-Sing prison, there is good reason to apprehend, that it will soon be necessary to enlarge this prison district, and consequently crowd this institution still more with convicts. This state of things admonishes us that the time has already arrived for deciding between the alternative of providing an additional number of solitary cells, or of abandoning that distinctive and essential feature of our system of discipline, which has given it all its efficacy and celebrity, and upon which the ultimate success of the experiment wholly depends. To be forced upon the latter alternative we should greatly deplore. Our confidence in the decidedly reformatory tendency of the system, when allowed its free and full operation, unembarrassed by counteracting causes, remains unshaken; and if it ever fall into disuse or disrepute, we are persuaded it will be owing to an imperfect application of its simple principles, and not any inherent defect in the system itself.

The unusual increase of convicts in our state prisons, for a year or two past, ought not, in our opinion, to be taken as evidence either of the inutility of penitentiary punishments, or of a disproportionate increase of crime. We think, on the contrary, it may be clearly shown, that, leaving out of the estimate those state prison offences which were not recognized as such by the statutes previous to the late revision, the ratio of increase of state prison convictions has not equalled that of the increase of our population. It is very evident, that one of the principal causes of the late increase, is the multiplication of state prison offences in the Revised Statutes, and that it ought to be ascribed to this cause, together with the more judicious exercise of the pardoning power, rather than to any want of efficacy in our mode of punishment. At least, let it not be attributed to the imperfection of our penitentiary system, until the true principles of that system shall have been fairly tested, by removing the obstacles which impede their free operation, and affording every facility necessary for exhibiting their legitimate influence.

It cannot reasonably be anticipated, that, while our population is so rapidly increasing, and that too by an unexampled tide of foreign emigration, the amount of crime will on the whole be diminished; but we are sanguine in the belief, that its overgrowth may be more effectually checked by the unembarrassed operation of the true principles of our system, than by any other human means.

We therefore respectfully but earnestly recommend to the Legislature, the immediate appropriation of ten thousand dollars, to be expended, under the direction of the inspectors of this prison, in the erection of an additional number of solitary cells. This sum, in addition to the available funds in the hands of the agent, will, it is believed, be sufficient to provide for the separate confinement, not only of our present surplus, but of the probable increase at this prison, by the enlargement of our prison district, during the ensuing year.

As the enlargement of this prison will increase the duties, already arduous, of the assistant-keepers, we beg leave to suggest also the expediency of increasing their pay, by adding fifty dollars to the annual salary of each.

Nothing but an imperious sense of duty would induce us again to advert to the situation of our female department, and renew our urgent plea for legislative interposition. It is no exaggeration to say, that this department presents a specimen of the most disgusting and appalling features of the old system of prison management, at the worst period of its history. Crowded as these females are, about thirty in number, into a single room of small dimensions and very imperfect ventilation, in the fourth story of the south wing, remote from the post of any officer, and accessible only through four bolted doors, where they are obliged to remain night and day, in an atmosphere absolutely nauseating to a visiter, and given up, without the possibility of any salutary supervision, to the unrestrained dominion of all the worst passions of our nature ; their condition, as may well be supposed, is truly wretched, as it regards health and government, and, with respect to the prospect of reformation, utterly hopeless. We know of no subject of legislation, which, in our opinion, calls more loudly for immediate action than this ; and it is our most earnest and importunate request that something decisive may be done at the present session of the Legislature.

Notwithstanding the great debasement of these females in their present circumstances, we are not among those who regard this class of convicts as being beyond the reach of moral motives, or the salutary influence of a good system of prison discipline. We believe that under the immediate direction of a competent matron, in an institution built upon the plan of our present prisons, with the same facilities for enforcing wholesome rules of discipline, they may

be as easily governed and reclaimed as male convicts, and be made at least to support themselves. This is not mere conjecture, but an opinion supported by facts. The experiment at Baltimore is conclusive. The directors of that penitentiary, in their report for the year 1828, say, "The female department, under the direction of its worthy and attentive matron, has produced a nett gain of \$1,335 71, derived from the proceeds of its labor for the weaving and other departments; proving in a satisfactory manner, that convict females, under the government of one of their own sex, may not only be as well disciplined as males, but that their labor may be so directed as to be equally profitable." With respect to the new female penitentiary in Connecticut, also, it is stated in the last report of the Prison Discipline society, that "The women, who were before crowded together in one apartment, and left to themselves, to make a noise which might be heard at a distance, and tear the hair from each other's heads, are now separated at night, and employed by day under the constant care and supervision of a matron, much changed for the better in their outward appearance, and more than supporting themselves by their labor." In view of such facts as these, in connexion with those respecting the wretched state of our female department, we hope the Legislature will not hesitate to decide upon the erection of a new and separate penitentiary for females.

We are aware that it has been suggested, that the south wing of this prison might be converted into a female penitentiary; but we have never supposed that such a notion could be seriously entertained for one moment, by any person acquainted with the internal arrangement and operations of this institution. To prevent, however, any possible misapprehension on this subject, we think it our duty here to assure the Legislature, that the project would be perfectly visionary. We speak not now of the inexpediency of the measure, but of its absolute impracticability, without incurring an expense, in the re-organization of the male department, more than equal to that of erecting an entire new institution for females. The south wing, as well as the north, stands in the midst of shops and yards, necessarily and completely occupied by male convicts, in prosecuting the various employments at which they labor; and, as it cannot be supposed that the design would be either to confine the females wholly within the wing, as at present, or to allow them to mingle in a common yard with the men, the only alternative would be to allot to them separate yard room, which could not be done in

such a manner as to prevent intercourse between the two departments, without a total derangement, and a great enlargement of our present prison grounds, shops, &c., at an immense expense ; and after all, with the best possible arrangement that could be made for the new institution, it would be in many respects very inconvenient, and in fact unfit for the purpose.

The foregoing remarks on this subject contemplate our institution as it is, with its present number of inmates. An increase of that number, which we have reason to expect, would of course augment the difficulty, not to say impossibility, of effecting the object in question.

But, on the supposition that it would be practicable to make suitable provision for the confinement of females in this institution, we submit it to your honorable body, whether it would be expedient, or right. It is well known that almost all of this class of convicts come from a few of our principal cities, remote, and in nearly the same direction from this institution. Would it, therefore, be consulting the pecuniary interests of the State, we respectfully ask, to locate the female prison at so great a distance from the places of a very great majority of the convictions, and to transport the convicts several hundred miles, back and forth, under the disadvantage, during several months of the year, of no other than the ordinary means of conveyance ? Or, in case no provision should be made to secure their return to the places whence they came, would it be doing justice to this community, to turn them out upon it, at the expiration of their sentences, and thus flood it with the accumulated depravity of all those sinks of pollution which are common and peculiar to large cities ? Equity, therefore, as well as economy and expediency, would, in our opinion, point to a different location, even if our south wing *could* be appropriated to the purpose. It appears to us, as we have already intimated, that there are very strong reasons for selecting a site with reference to the distance and facilities of communication between it and some of our larger cities. And what spot more eligible than Sing-Sing ? Besides the consideration just mentioned, which would favor that location as much as perhaps any other in the State, there are others of not a little weight—the site is the property of the State ; materials for building are abundant on the ground ; all the labor may be performed by the male convicts ; both institutions may be placed under the general direction of one set of officers ; suitable and profitable employment for the females may be

found in the city of New-York ; and they may manufacture, make, mend, and wash all the clothes of the male convicts.

The resident chaplain informs us, that the Sunday school for convicts has been continued through the year, with an increased number of pupils, and unabated interest ; and that, in his opinion, the effect of the moral culture bestowed upon the convicts generally, is apparent, not only in their humble and submissive demeanor, and cheerful compliance with the rules of the prison, but also, in very many cases, in a pungent sense of the guilt and ill-desert of their crimes, gratitude to God and man for that restraint and discipline by which they have been brought to their right mind, and ingenuous resolutions of future amendment. And it gives us pleasure to state, from our own observation, that the accustomed vigilance, and skill, and energy, of all the officers of the institution, have been manifest during the past year, in the prompt and faithful execution of its police regulations, without which, the chaplain is as fully aware as we are, his utmost efforts would be unavailing.

He has also furnished us with the following statements respecting the former character and habits of the convicts, which we embody in our report, under the impression that they will be interesting to the philanthropist, and perhaps useful to the legislator.

Among the convicts discharged from the prison during the past year, by pardon and expiration of sentence, there were :

|                                  |       |
|----------------------------------|-------|
| Of superior education,.....      | 2     |
| Of decent common education,..... | 36    |
| Of very poor education,.....     | 65    |
| Of no education,.....            | 30    |
|                                  | <hr/> |
|                                  | 133   |
|                                  | <hr/> |

Of this number, ninety-five have been addicted to habits of intemperance.

The male convicts remaining in prison on the first day of the present year, may be classed, with reference to their former habits of drinking, in the following manner :

|   |       |
|---|-------|
| Grossly intemperate,.....   | 209   |
| Moderately intemperate, (regular drinking, and occasional in-<br>toxication, or either,)..... | 257   |
| Temperate drinkers,.....  | 132   |
| Total abstinentes, or nearly so,.....   | 19    |
|   | <hr/> |
|   | 617   |
|   | <hr/> |

Of these, 346 were under the influence of ardent spirits at the time of the commission of their crimes.

All which is respectfully submitted,

E. WILLIAMS,  
J. H. HARDENBERG,  
WALTER WEED,  
HORACE HILLS.

INSPECTOR'S OFFICE,  
State Prison, Auburn, }  
*January 20, 1832.*

The first part of the paper discusses the importance of the study of the history of the English language. It is a branch of linguistics which deals with the changes in the language over time. The second part of the paper discusses the importance of the study of the history of the English language. It is a branch of linguistics which deals with the changes in the language over time. The third part of the paper discusses the importance of the study of the history of the English language. It is a branch of linguistics which deals with the changes in the language over time. The fourth part of the paper discusses the importance of the study of the history of the English language. It is a branch of linguistics which deals with the changes in the language over time. The fifth part of the paper discusses the importance of the study of the history of the English language. It is a branch of linguistics which deals with the changes in the language over time. The sixth part of the paper discusses the importance of the study of the history of the English language. It is a branch of linguistics which deals with the changes in the language over time. The seventh part of the paper discusses the importance of the study of the history of the English language. It is a branch of linguistics which deals with the changes in the language over time. The eighth part of the paper discusses the importance of the study of the history of the English language. It is a branch of linguistics which deals with the changes in the language over time. The ninth part of the paper discusses the importance of the study of the history of the English language. It is a branch of linguistics which deals with the changes in the language over time. The tenth part of the paper discusses the importance of the study of the history of the English language. It is a branch of linguistics which deals with the changes in the language over time.

ending 31st Dec., 1831.

|     |    | <i>Term of sentence.</i> |     |
|-----|----|--------------------------|-----|
| ..  | 10 | 10 years, .....          | 13  |
| ..  | 1  | 9 do .....               | 1   |
| ..  | 1  | 8 do .....               | 3   |
| ..  | 91 | 7 do .....               | 3   |
| ..  | 6  | 6 do .....               | 2   |
| ..  | 9  | 5 do .....               | 28  |
| ..  | 12 | 4 do .....               | 23  |
| ..  | 1  | 3 do 6 months, .....     | 2   |
| ..  | 1  | 3 do 1 day, .....        | 1   |
| ..  | 1  | 3 do .....               | 49  |
| ..  | 2  | 2 do 6 months, .....     | 1   |
| ..  | 8  | 2 do 1 day, .....        | 2   |
| ..  | 14 | 2 do .....               | 46  |
| ..  | 5  |                          |     |
| ..  | 1  |                          | 174 |
| ..  | 3  |                          |     |
| ..  | 1  |                          |     |
| ..  | 1  |                          |     |
| ..  | 1  |                          |     |
| ..  | 1  |                          |     |
| ..  | 1  |                          |     |
| ..  | 1  |                          |     |
| ..  | 2  |                          |     |
| 174 |    |                          |     |



THE HISTORY OF THE

REIGN OF

CHARLES THE FIRST

BY

JOHN BURNET

OF THE UNIVERSITY OF OXFORD

IN TWO VOLUMES

THE SECOND VOLUME

CONTAINING

THE HISTORY OF THE

REIGN OF

CHARLES THE FIRST

BY

JOHN BURNET

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OF THE UNIVERSITY OF OXFORD

IN TWO VOLUMES

THE SECOND VOLUME

CONTAINING

THE HISTORY OF THE

REIGN OF

CHARLES THE FIRST

y of January to the 31st December,

|         | <i>When pardoned.</i> | <i>Term of service.</i> |           |         |
|---------|-----------------------|-------------------------|-----------|---------|
| y,..... | February 23,....      | 1 year,                 | 3 months, | 6 days. |
| b ..... | November 12,...       | do                      | 9 "       | 7 "     |
| .....   | June 10,.....         | 8 "                     | 3 "       | 28 "    |
| .....   | October 28,....       | 3 "                     | 0 "       | 13 "    |
| .....   | July 14,.....         | 1 "                     | 1 "       | 9 "     |
| .....   | November 10,...       | 5 "                     | 4 "       | 0 "     |
| .....   | September 28,...      | 4 "                     | 4 "       | 16 "    |
| .....   | June 10,.....         | 3 "                     | 8 "       | 9 "     |
| .....   | do .....              | 3 "                     | 8 "       | 14 "    |
| .....   | do .....              | 3 "                     | 4 "       | 9 "     |
| .....   | October 12,....       | 3 "                     | 4 "       | 16 "    |
| .....   | August 24,.....       | 8 "                     | 10 "      | 5 "     |
| .....   | December 19,...       | 6 "                     | 0 "       | 2 "     |
| .....   | August 16,.....       | 2 "                     | 6 "       | 28 "    |
| .....   | June 10,.....         | 8 "                     | 1 "       | 5 "     |
| .....   | do .....              | 3 "                     | 8 "       | 14 "    |
| .....   | March 15, .....       | 3 "                     | 1 "       | 27 "    |
| .....   | December 19,...       | 6 "                     | 4 "       | 29 "    |
| .....   | August 16,.....       | 5 "                     | 11 "      | 7 "     |
| .....   | do .....              | 5 "                     | 10 "      | 29 "    |
| .....   | May 28,.....          | 1 "                     | 11 "      | 5 "     |
| .....   | February 25,....      | 3 "                     | 9 "       | 21 "    |
| .....   | April 27, .....       | 4 "                     | 4 "       | 0 "     |
| .....   | January 6,.....       | 2 "                     | 2 "       | 21 "    |
| .....   | December 19,...       | 5 "                     | 0 "       | 5 "     |
| f,..... | February 23,....      | 1 "                     | 4 "       | 5 "     |
| .....   | October 25,....       | 1 "                     | 0 "       | 5 "     |
| .....   | September 5,....      | 1 "                     | 3 "       | 6 "     |
| .....   | July 13, .....        | 3 "                     | 9 "       | 29 "    |
| .....   | do .....              | 3 "                     | 9 "       | 29 "    |
| .....   | December 19,...       | 2 "                     | 2 "       | 11 "    |
| .....   | August 16,.....       | 5 "                     | 7 "       | 11 "    |
| .....   | September 5,....      | 3 "                     | 4 "       | 26 "    |







No. 4. )

**CONVI**  
**at Aubu**

.....  
.....

tence, .....  
.....  
.....

December, 18

| ... | 319 | Bla..... | 62  |
|-----|-----|----------|-----|
| ... | 42  | Bul      |     |
| ... | 35  | Tul..... | 568 |
| ... | 44  | Cot..... | 49  |
| ..  | 20  | Car..... | 15  |
| ... | 13  | We.....  | 14  |
| ..  | 18  | Hai      |     |



## REPORT

Of the physician of the State Prison, for the year  
1831.

*To the Inspectors of the Auburn State Prison.*

GENTLEMEN,

The continued good health of the convicts in this prison affords but few suggestions for the improvement of their physical condition. Those men that are entirely engaged in sedantary occupations suffer most by confinement; such as tailors, and shoe-makers: the position of the body when at labor, and the necessary restrictions in the little exercise which they receive, in passing to and from their dining-hall and cells, favors the development of disease where any predisposition exists.

Continued application at the above mentioned branches furnish a large share of the diseases and deaths in *such* as are in no way rendered susceptible from previous disease or hereditary predisposition.

In looking over the fatal cases for the last year I find,

|   |    |
|---|----|
| To have been evidently diseased on their reception, ..... | 10 |
| Were considered healthy when received, .....              | 4  |

14

2 of which, Roberts and Allen, were tailors; 1 of which, Cudworth, was a shoe-maker; and 1 of which, Jones, was a weaver.

|  |   |
|--|---|
| Committed suicide, Smith, alias Segro, .....               | 1 |
| his health was questionable when he came into prison. .... | — |

15

There has been a less amount of disease during the past summer than in previous seasons; attributable, in a great degree, to change in diet.

During the warm months, in the season past, codfish was given, instead of beef; and very evidently to the comfort of the convicts, and to the advantage of the various contractors. I would, therefore, respectfully suggest its continuance, in summer, as often as twice or thrice a week; and that bread be substituted for mush; that fresh meat be not given oftener than once a week.

I conceive there would be no advantage derived from change in diet in the cool months.

I would beg leave to suggest, in the contemplation of erecting new cells in this prison, the importance of some better plan of ventilation than exists in the north wing: though justly celebrated for its general construction, yet, in this particular, exceedingly objectionable.



The health and vigor of the bodily system greatly depend upon cleanliness and free ventilation. The former I believe to be scrupulously attended to in every department.

I would respectfully urge upon your consideration the importance of some better regulations in the confinement of females.

There are, at this time, 29 females, in a space entirely too small for one-third of that number, badly ventilated, of necessity rendering their moral, as well as physical condition, deplorably bad: the young in crime are here associated with the most abandoned and profligate in vice.

The average of sick per day for each month, as follows:

|                  |   |
|------------------|---|
| January, .....   | 5 |
| February, .....  | 6 |
| March, .....     | 9 |
| April, .....     | 8 |
| May, .....       | 6 |
| June, .....      | 5 |
| July, .....      | 4 |
| August, .....    | 5 |
| September, ..... | 6 |
| October, .....   | 5 |
| November, .....  | 6 |
| December, .....  | 6 |

A fraction less than 1 per cent of sick.

*The deaths as follows :*

| NAME.                    | Age. | Time of death.       | Disease.                          | Condition when received.                  |
|--------------------------|------|----------------------|-----------------------------------|---|
| Simeon Slyter, .....     | 33   | January 23, 1831, .. | Consumption, .....                | Hereditarily diseased.                    |
| Philip Doughty, .....    | 40   | March 11, " ..       | " .....                           | Diseased.                                 |
| Andrew Fordham, .....    | 45   | " 22, " ..           | Consumption, .....                | "   |
| Winthrop Davis, .....    | 26   | April 19, " ..       | Chron. inflammation of the liver, | Diseased, extensive enlargement of liver. |
| Erastus Ferris, .....    | 26   | " 30, " ..           | Consumption, .....                | Diseased.                                 |
| David Cudworth, .....    | 35   | May 2, " ..          | " .....                           | Healthy.                                  |
| William Jones, .....     | 26   | June 16, " ..        | Inflammation lungs, .....         | "   |
| John Roberts, .....      | 28   | " 26, " ..           | Consumption, .....                | "   |
| John Smith, alias Segro, | 23   | July 6, " ..         | Suicide, .....                    | "   |
| Ann Carr, .....          | 33   | September 29, " ..   | Consumption, .....                | Diseased, in the last stage.              |
| Isaac Allen, .....       | 24   | October 12, " ..     | " .....                           | Healthy.                                  |
| Francis Jennings, .....  | 19   | " 20, " ..           | " .....                           | Diseased, (hereditary.)                   |
| John Kelly, .....        | 33   | November 2, " ..     | " .....                           | Diseased.                                 |
| Lewis Thomas, .....      | 29   | " 18, " ..           | " .....                           | Diseased, (hereditary.)                   |
| Ezekiel Lyon, .....      | 25   | December 12, " ..    | " .....                           | Diseased.                                 |

*The proportion of deaths from the different shops.*

|   |    |
|---|----|
| From the tailors' shop, .....   | 5  |
| From the shoe-makers' shop, .....                                     | 3  |
| "    weavers'    "    .....   | 3  |
| (one of which had been in but a few days, and one committed suicide.) |    |
| From the comb shop, .....   | 1  |
| "    stone cutters' shop, .....                                       | 1  |
| "    button    "    .....   | 1  |
| "    black-smith    "    .....  | 0  |
| "    cabinet    "    .....  | 0  |
| "    tool    "    .....   | 0  |
| "    hame and saddle tree shop, .....                                 | 0  |
| "    coopers'    "    .....   | 0  |
| "    painters'    "    .....  | 0  |
| Females, .....  | 1  |
| Total deaths, .....   | 15 |

Respectfully submitted.

JOHN GEORGE MORGAN,

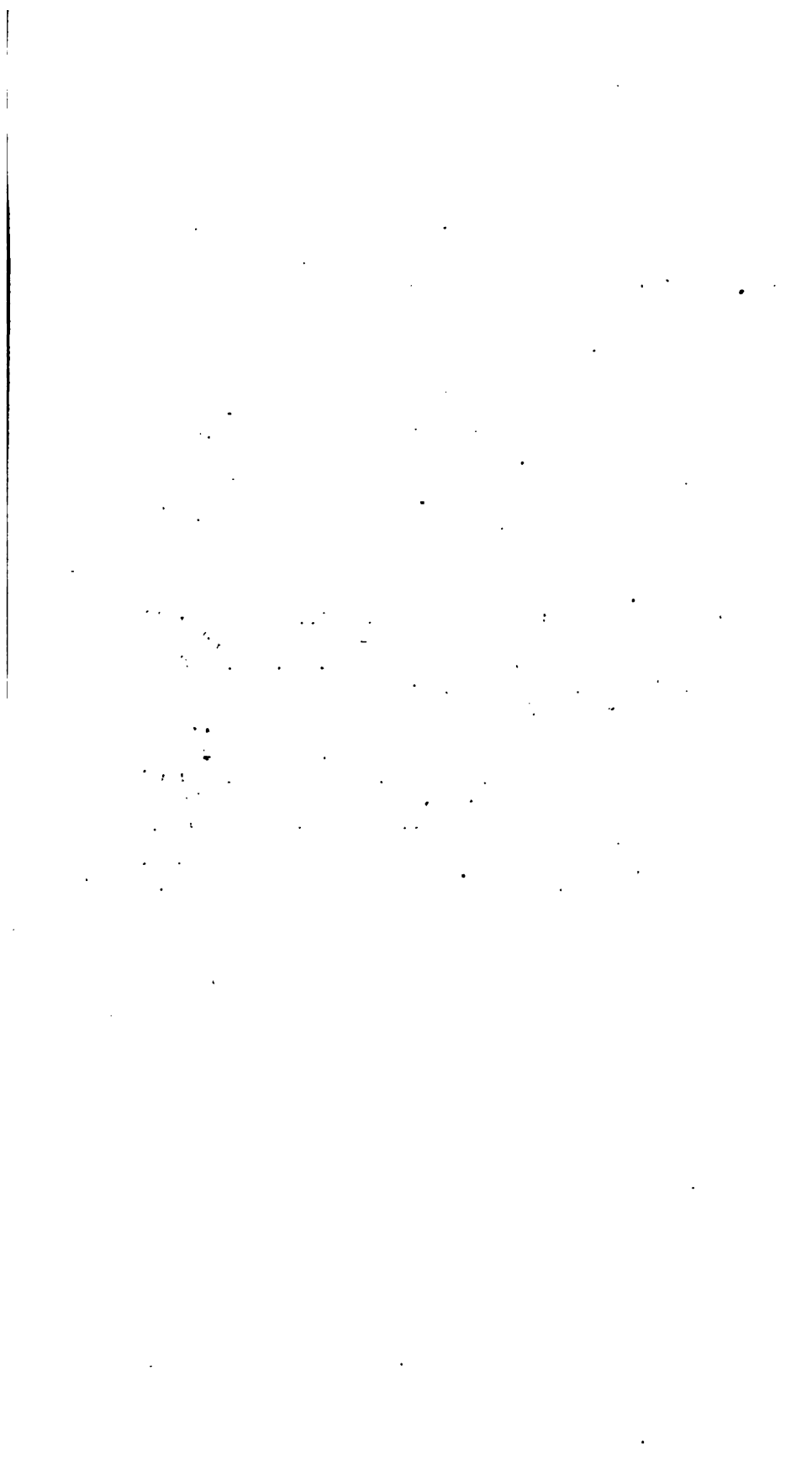
*Visiting Physician and Surgeon.*

( No. 6. )

## INVENTORY

*Of the Property belonging to the State Prison at Auburn, as taken  
30th September, 1831.*

|   |              |
|---|--------------|
| Comb shop,..... tools, &c.....                          | \$13 55      |
| Tailors' shop,..... do .....                            | 136 67       |
| Coopers' shop,..... do .....                            | 828 16       |
| Tool shop,..... do .....                                | 13 92        |
| Carpenters'..... do .....                               | 124 36       |
| Shoe shop,..... do .....                                | 840 02       |
| Weavers' shop,..... do .....                            | 1,720 09     |
| Black-smiths' shop,..... do .....                       | 909 75       |
| Chair, cabinet and turners' shop, do .....              | 78 80½       |
| Check shop,..... do .....                               | 172 51       |
| Sattinett shop,..... do .....                           | 703 00       |
| Stone shop and north yard,.... do .....                 | 607 98       |
| South wing, sundry articles,.....                       | 559 38       |
| Bedding, clothing and raw material for same,.....       | 11,812 72    |
| Stoves and pipes, including all in prison,.....         | 1,273 51     |
| Hospital, medicine, surgical instruments, fixtures, &c. | 388 76       |
| Chapel, fixtures, &c.....                               | 75 50        |
| Soap-house, .....                                       | 113 95       |
| Stable, horse, waggon, &c.....                          | 315 00       |
| Fire-engine and hose, .....                             | 1,031 62     |
| Guard-house, powder, fixtures, &c.....                  | 76 25        |
| Keepers' hall, fixtures, &c.....                        | 37 21        |
| Kitchen apparatus,.....                                 | 898 40       |
| Agent's office, fixtures, &c.....                       | 22 50        |
| Clerk's office, books, stationary, fixtures, &c. &c.... | 406 60       |
|   | <hr/>        |
| Inventory as taken 31st October, 1830,.....             | \$23,160 21½ |
|   | <hr/>        |
| Increase for one year,.....                             | 22,309 67    |
|   | <hr/>        |
|   | <hr/>        |
|   | \$850 54½    |



**IN SENATE,**

**January 25, 1832.**

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**ANNUAL REPORT**

**Of Richard M'Carty, Inspector of Flour and Meal  
for the city and county of New-York, and the coun-  
ty of Kings.**

**Report of flour and meal inspected in the city of New-York and  
in Kings county, from the 1st January, 1831, to the 1st January,  
1832.**

| <b>Inspected in the city of New-York.</b> | <b>Average<br/>value per<br/>barrel.</b> | <b>Amount.</b> |
|---|--|----------------|
| 351 barrels extra superfine flour, ...    | 6 12½                                    | 2,149 87½      |
| 812,271 " superfine flour, .....          | 5 62½                                    | 4,569,024 37½  |
| 23,551 half barrels " " .....             | 2 87½                                    | 67,809 12½     |
| 30,845 barrels fine flour, .....          | 5 25                                     | 161,936 25     |
| 1,357 half barrels fine flour, .....      | 2 75                                     | 3,731 75       |
| 6,236 barrels fine middlings, .....       | 4 94                                     | 30,805 84      |
| 5,852 " middlings, .....                  | 4 56                                     | 26,685 12½     |
| 3,388 " ship stuffs, .....                | 4 00                                     | 13,552 00      |
| 56,744 " bad, (not fit for shipping)      | 4 37½                                    | 248,255 00     |
| 279 half bbls. bad, " " .....             | 2 19                                     | 611 01         |
| 9,222 barrels rye flour, .....            | 4 00                                     | 36,888 00      |
| 9,951 hhds. Indian meal, .....            | 15 00                                    | 149,265 00     |
| 24,076 barrels " " .....                  | 3 62½                                    | 87,275 50      |
| 177 " buckwheat flour, .....              | 4 50                                     | 796 50         |
| 405 half barrels, " " .....               | 2 50                                     | 1,012 50       |

---

**Total value of flour and meal inspected in N. Y. . \$5,399,797 85**

---

**Of thea bove about 100,000 were re-inspected, and included in the  
above amount.**

## RECAPITULATION.

915,687 barrels wheat flour.  
 25,187 half barrels wheat flour.  
 9,222 barrels rye flour.  
 9,951 hhds. Indian meal.  
 24,076 barrels "  
 177 " buckwheat flour.  
 405 half barrels "

Undertared and light weight, 462 barrels.

|  |      |           |
|--|------|-----------|
| Fees for boring, inspecting, plugging and branding each  | hhd. | \$0 04    |
| " " " " "  | bbl. | 0 01½     |
| Fees for weighing each bbl. light, .....   |      | 0 06      |
| Total amount of fees, .....  |      | 15,047 83 |
| Expenses for rent, brands, plugs, coal, &c. and for four<br>assistant inspectors and eight laborers, ..... |      | 7,850 00  |

| Inspected in Kings county.           | Value.              |
|--------------------------------------|---------------------|
| 4,563 barrels superfine flour, ..... | \$25,666 87½        |
| 1,064 " fine flour, .....            | 5,586 00            |
|                                      | <u>\$31,252 87½</u> |

Fees 2 cents per barrel, the whole amount of which is received by the assistant in Kings county for his services, \$112 54

RICHARD MCARTY,  
*Inspector.*

*New-York, January 20, 1832.*

No. 33.

**IN SENATE,**

**February 3, 1832.**

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**REPORT**

**Of the Inspectors of the State-Prison at Auburn, in  
compliance with a resolution of the Senate of the  
18th of January.**

*To the Honorable the Senate.*

The undersigned, inspectors of the state prison at Auburn, pursuant to a resolution of the Senate, passed January 18th, 1832,

**RÉPORT:**

That they have estimated the expense of altering the south wing of this prison, and of constructing therein 220 separate cells, after the manner in which the cells in the north wing are built, being the whole number of cells which may be so erected without encroaching upon rooms necessary for other purposes: And we herewith annex a detailed estimate of the expense of such alteration, amounting to \$15,973.06.

The plan of the alteration will be submitted without delay, and as soon as it can be completed.

It is proper to observe, that the proposed alteration requires about one half of the room now occupied by the female convicts of this prison. But we do suppose and have preceeded upon such supposition, that every view of the condition, both of this prison and of



the female convicts, urges the adoption of some plan for an early change in this respect by the Legislature.

E. WILLIAMS,  
HORACE HILLS,  
WALTER WEED.

*State Prison, Auburn, January 30th, 1832.*

## DETAILED ESTIMATE

*For building 220 separate cells in the south wing of the State Prison at Auburn, in addition to materials that can be used from old building.*

|   |          |
|---|----------|
| 213 perch building stone, at 5s. ....                                 | \$133 13 |
| 733 " cutting " at \$1,.....  | 733 00   |
| 7,920 feet 8 inch " to cover cells, at 1s. 3d.                        | 1,237 50 |
| 285,000 brick, at \$4.50, .....                                       | 1,282 50 |
| 7,000 bushels lime, at 1s. ....                                       | 875 00   |
| 800 loads sand, at 3s. ....   | 300 00   |
| 8,000 lath, at \$1, .....   | 8 00     |
| 14 bushels hair, at 2s.....   | 3 50     |
| 497½ feet window caps and starts, at 15 cents, ....                   | 71 92    |
| 114½ " " sills, at 50 cents, .....                                    | 57 25    |
| 92 " water table, at 18 cents, .....                                  | 16 56    |
| 150 scaffold poles, at 50 cents,.....                                 | 75 00    |
| 400 lb. " ropes, at 1s. 7d.....                                       | 58 33    |
| 50 " horses, at 50 cents,.....  | 25 00    |
| 10,000 feet " plank, at 75 cents, .....                               | 75 00    |
| 32½ tons wrought iron for cell doors and hangings,<br>at \$100, ..... | 3,225 00 |
| 1½ " " " " window grates, at \$100, .....                             | 175 00   |
| 6½ " cast " " galleries, at \$100, ....                               | 650 00   |
| 8 cwt. " " " window sills, at \$5, ...                                | 40 00    |
| 10 " pig lead, " fastening irons, at \$6,..                           | 60 00    |
| 8,000 bushels charcoal, at 6 cents, .....                             | 480 00   |
| 50 gallons oil for drilling, at \$1, .....                            | 50 00    |
| 50 lbs. borax for brazing, at 28 cents,.....                          | 14 00    |
| 11 boxes window glass, at \$3.50, .....                               | 38 50    |
| 4 " plated tin for water conductors, at \$12.50                       | 50 00    |
| 315 lbs. sheet copper for eaves, at 44 cents, ....                    | 138 60   |
| copper nails for " .....  | 30 00    |
| stock for 220 door locks, iron, steel and brass,<br>at \$1.48, .....  | 325 60   |
| 220 lbs. shingle nails, at 7½ cents,.....                             | 16 50    |
| 120 " lath " at 7½ cents,.....  | 9 00     |
| 20 cwt. nails, assorted sizes, at \$7.50,.....                        | 150 00   |
| 6,612 feet oak lumber, at \$1,.....                                   | 66 12    |
| 9,156 " hemlock, at 75 cents, .....                                   | 68 67    |
| 11,500 " pine, clear, at \$20,.....                                   | 230 00   |
| 10,500 " " 2d quality, at \$15,.....                                  | 157 00   |
| 54 M. shingles, at \$3, .....   | 162 00   |
| 50 gross wood screws for galleries, at \$1.50,....                    | 75 00    |
| 200 gallons linseed oil, at \$1.12½, .....                            | 225 00   |
| 500 lbs. white lead, at 11 cents, .....                               | 55 00    |
| Carried forward,.....   | \$       |

|   |             |    |                    |
|---|-------------|----|--------------------|
| Brought forward.....  |             | \$ |                    |
| 300 lbs. paris white, at 3 cents,.....                      |             |    | 9 00               |
| 25 papers lamp-black, at 1s.....                            |             |    | 3 13               |
| 1½ dozen paint brushes, at \$7.50,.....                     |             |    | 11 25              |
| 2 " shovels, at \$11,.....                                  |             |    | 22 00              |
| 1 " hoes, at \$6,.....                                      |             |    | 6 00               |
| 10 cwt. iron for stone tools, at \$5,.....                  |             |    | 50 00              |
| 5 " cast steel, " " at \$22,.....                           |             |    | 110 00             |
| Files for making locks, and fitting irons to cells,         |             |    | 50 00              |
| Other tools for making locks wanted,.....                   |             |    | 25 00              |
| Trowels, hand and wheel-barrows, &c. &c....                 |             |    | 100 00             |
| 100 days work with teams, at \$2,.....                      |             |    | 200 00             |
| It is calculated that 100 men will do the work in 9 months. |             |    |                    |
| Boarding and clothing 100 men 9 months, each                |             |    |                    |
|   | at \$26.30, |    | 2,630 00           |
| 2 master mason builders 9 months, each \$50,...             |             |    | 900 00             |
| 1 " carpenter " 3 " or 76 days,                             |             |    |                    |
|   | at \$1.50,  |    | 114 00             |
| 1 " blacksmith, 6 months, at \$50,.....                     |             |    | 300 00             |
|   |             |    | <u>\$15,973 06</u> |

**No. 34.**

**IN SENATE,**

**January 27, 1832**

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**ANNUAL REPORT**

**Of D. B. Young, an Inspector of Fish for the city and  
county of New-York.**

*To the Honorable the Legislature of the State of New-York.*

The inspector of fish for the city and county of New-York, reports that he has inspected the following amount of fish, from 1st of January, 1831, to the 1st of January, 1832.

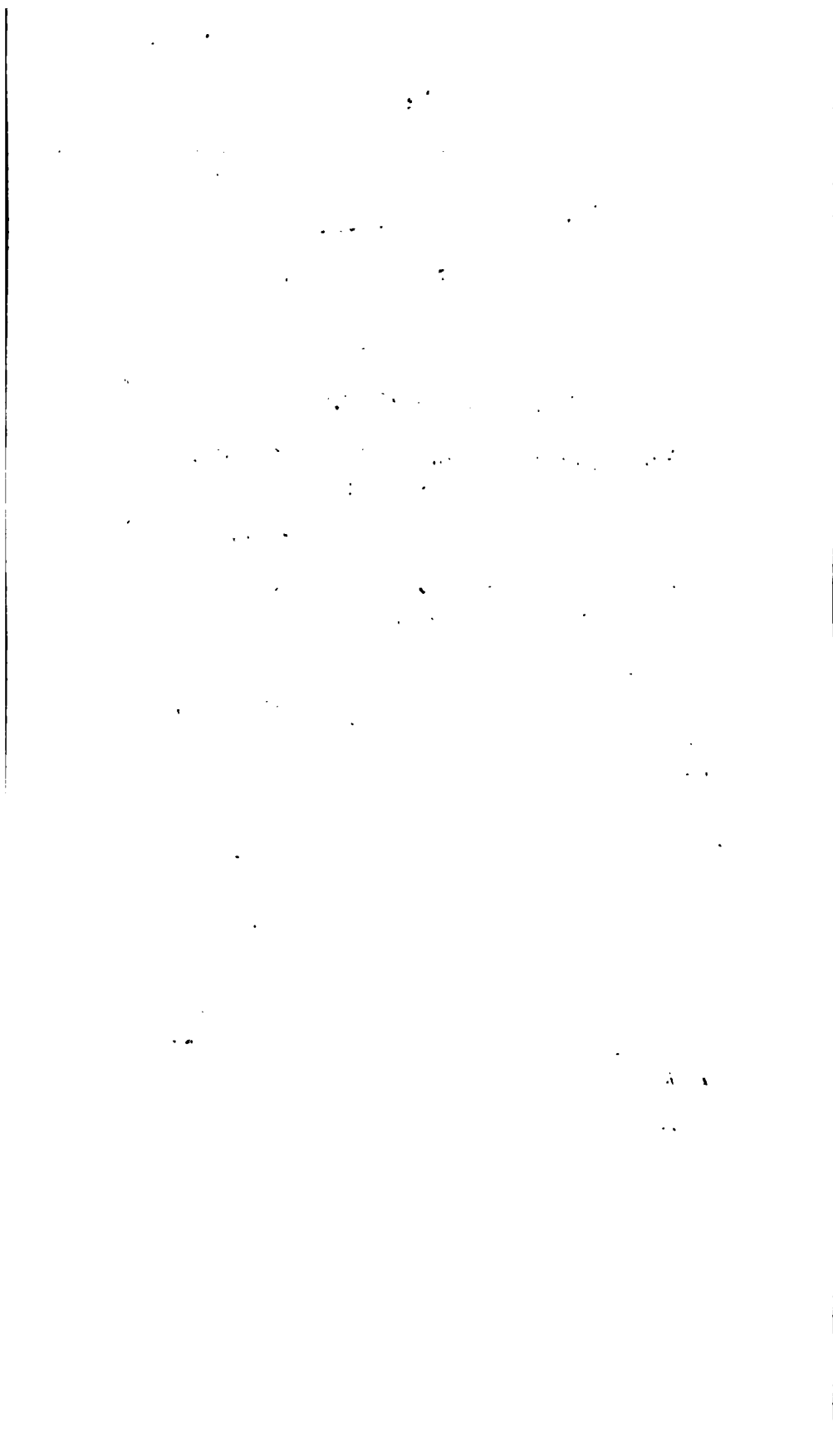
| <i>Value.</i>  |  |            |
|--|--|------------|
| 975 barrels mackerel,.... at 22 shillings per bbl..... |  | \$2,681 25 |
| 150 half barrels " .... 12 " .....                     |  | 225 00     |
| 100 barrels codfish,..... \$4 per bbl. ....            |  | 400 00     |
| 25 " shad,..... 6 " .....                              |  | 150 00     |
|  |  | <hr/>      |
|  |  | \$3,456 25 |

|                       |                 |
|-----------------------|-----------------|
| <b>Fees,.....</b>     | <b>\$156 25</b> |
| <b>Expenses,.....</b> | <b>25 00</b>    |
|                       | <hr/>           |
|                       | <b>\$131 25</b> |

**D. B. YOUNG,**  
*Inspector.*

*New-York, Jan. 14, 1832.*

[S. No. 34.]



No. 35.

**IN SENATE,**

**January 31, 1832.**

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**ANNUAL REPORT**

**Of Robert Barnes, an Inspector of Hops for the city  
and county of New-York.**

*New-York, 1st mo. 16, 1832.*

**TO THE LEGISLATURE OF THE STATE OF NEW-YORK.**

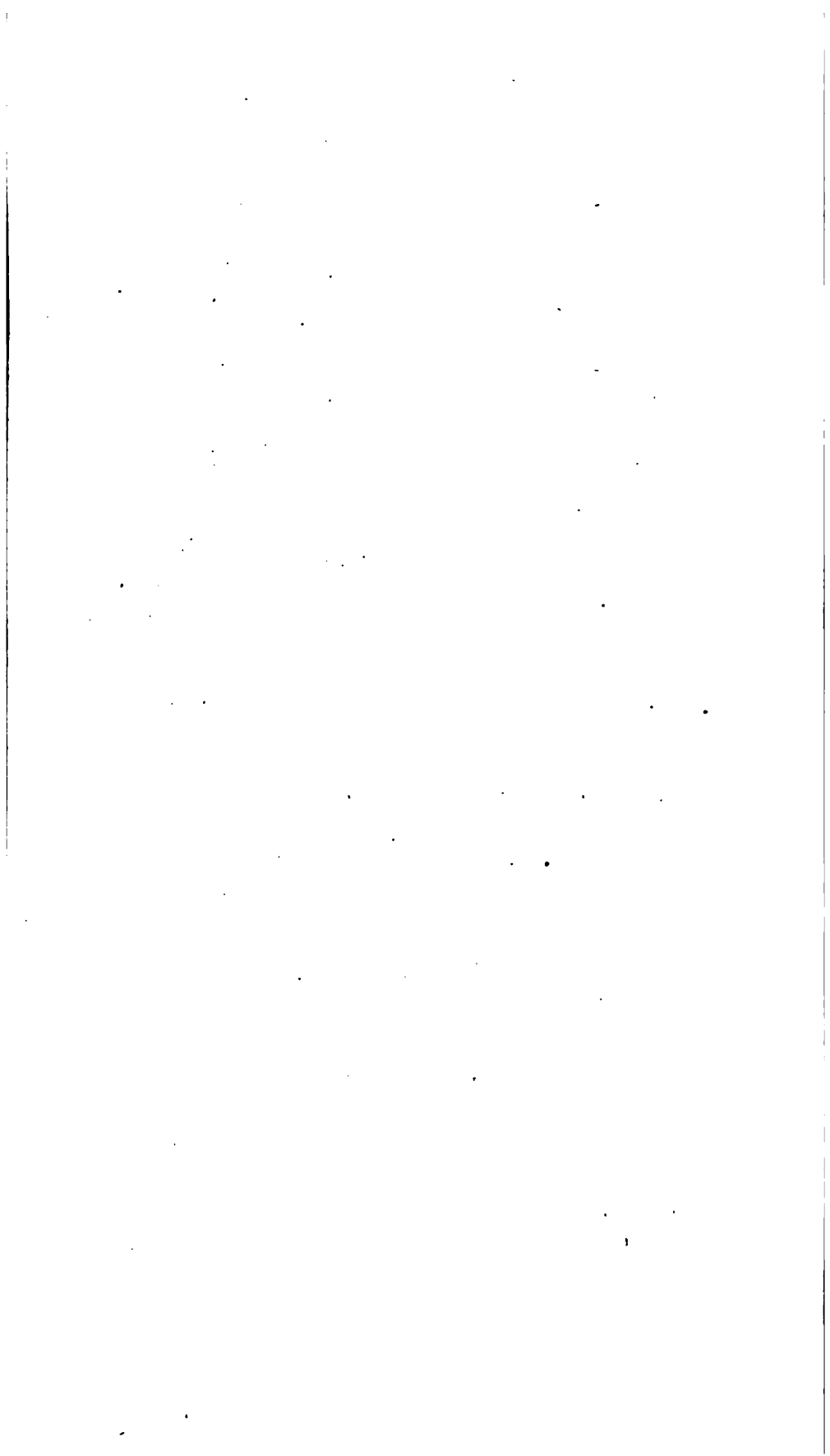
In conformity with our state laws, on the subject of inspection, I herewith transmit a statement of all the hops that have passed through my hands, as inspector of the article for the port of New-York, during the last 12 months, ending 1st January 1832; say quantity and value as near as I can obtain information on sales,

|  |                 |
|--|-----------------|
| 750 bales, average 210 lbs. total 153,300 lbs. at 13 cts.                  | \$19,929 00     |
| Fees at 10 cts. per 100 lbs. ....  | \$153 30        |
| Deduct for extra labor and incidental expences, 4 cents<br>per bale, ..... | 29 20           |
| Inspectors fees, .....   | <u>\$124 10</u> |

Emoluments as yet not ascertained, having seized 32 bales of hops, 12 of which are paid for, and 20 are replevied, suit not yet commenced, which will be attended to with all diligence, and proceeds applied as the law directs.

Yours most respectfully,  
ROBERT BARNES,  
*Inspector.*

Taken and affirmed before me, 19th Jan. 1832.  
JOHN YATES CEBRA, *Alderman of 1st ward,*  
*and Justice of the Peace for the city and county of New-York*



**No. 36.**

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**IN SENATE,**

**January 30, 1832.**

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**ANNUAL REPORT**

**Of Epaphras Warren, an Inspector of Beef and  
Pork for the county of Tompkins.**

*To the Honorable the Legislature of the State of New-York.*

I, Epaphras Warren, inspector of beef and pork for the county of Tompkins, residing in the village of Ithaca, do report, that during the year ending on the 1st day of January, 1832, I have inspected forty-four barrels of mess pork, and one hundred and eight barrels of prime pork, and sixteen barrels of cargo pork. About two-thirds of the above was still-fatted, and the other third was fatted on corn, and was all of a good quality; the average value was fourteen dollars for mess and eleven for prime and eight for cargo per barrel.

The amount of fees derived from my office during the year was eighty-eight dollars and fifty cents.

All of which is respectfully submitted.

**EPAPHRAS WARREN,**  
*Inspector.*

*Ithaca, January 24, 1832.*



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1970

**No. 37.**

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**IN SENATE,**

**February 6, 1832.**

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**REPORT**

**Of the Commissioners of the Land-Office, on the petition of William Long.**

The Commissioners of the Land-Office, to whom was referred, by the Senate, the petition of William Long, praying remuneration for damages and expenses sustained in consequence of being kept out of possession of a piece of land purchased from the people of this State,

**RESPECTFULLY REPORT :**

That on the twenty-fourth day of December, 1830, the petitioner, at a sale by the Surveyor-General, in pursuance of the statute for the sale of the unappropriated lands, purchased ninety-eight acres of land, part of lot number 35, in the patent of Sacondaga, in the town of Mayfield, Montgomery county : made the first payment, executed his bond for the balance of the purchase money, and received a certificate of the purchase, entitling him to a patent on payment of the further sum of \$368. On the fourth day of January last he made a further payment of \$87.81, as appears by the treasurer's receipt accompanying the petition.

The premises in question had been mortgaged to the people by Archibald Shanks to secure a loan ; and the mortgage had been foreclosed, and the premises bid in by the Attorney-General, pursuant to law, previous to the sale to the petitioner.

On the twentieth day of April last the petitioner represented to the Attorney-General that Shanks refused to give up the possession of the premises ; and the Attorney-General, thereupon, gave the petitioner a written consent to prosecute an ejectment suit in the name of the people for the recovery of the possession, pursuant to 1 R. S.

[S. No. 37.]

180, sec. 10, 11; and advised him that Skanks would probably surrender the possession on being informed that he would be subjected to costs in case of refusal. And the petitioner states that he soon after obtained the possession of the land.

Cases have before occurred where the purchaser of State lands has been kept out of possession; but no provision has been made by law for the payment of any damages or expenses on that account. Nothing peculiar appears in this case, to distinguish it from all similar cases.

*Feb. 2, 1832.*

GREENE C. BRONSON, *Attorney-General.*

SIMEON DE WITT, *Surveyor-General.*

A. C. FLAGG, *Secretary.*

SILAS WRIGHT, JR. *Comptroller.*

**No. 38.**

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**IN SENATE,**

**February 7, 1832.**

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**REPORT**

**Of the select committee on so much of the Governor's message as relates to county poor-houses, &c. on the memorial of the mayor, aldermen and commonalty of the city of Albany.**

Mr. Sherman, from the committee on so much of the governor's message as relates to county poor-houses, &c. to whom was referred the memorial of the mayor, aldermen and commonalty of the city of Albany,

**REPORTED :**

That the memorialists solicit from the Legislature the passage of a law, excepting them from the operation of the 15th, 16th, 17th, 18th and 19th sections of the Revised Statutes, relating to town and county poor, (vol. 1, p. 616.) The effect of which law would be to authorise the memorialists to make the city of Albany a separate district, by itself, so far as relates to the support and maintenance of its own poor; and to leave the remaining towns of the county at liberty to pursue the mode which they may adopt under the existing law on the subject.

It appears that the aggregate population of the eight towns in the county, is about equal to the population of the city. That the taxable property of the said towns amounts to three millions of dollars, while that of the city of Albany amounts to nine millions. But in the board of supervisors the towns have eight members and the city but five, corresponding to the number of wards.

In consequence of this inequality of representation in the board, in relation to population as well as property; and in consequence of  
[S. No. 38.]

the great dissimilarity of interests, existing between a populous city and county towns, particularly in relation to providing for, and maintaining the poor, the memorialists feel that they are subjected to great inconvenience and injustice.

The whole expense of the poor of the city and county appears to be about 15,000 dollars. That there is received, for excise licenses, in the city and county, six thousand dollars; of which sum five thousand is raised in the city of Albany. And that after deducting the whole amount from the said 15,000 dollars, there will remain to be raised and collected by taxes the sum of nine thousand dollars, two-thirds of which sum must necessarily fall upon city property.

It further appears that the memorialists have recently erected, for the maintenance of their poor, a large and commodious building or almshouse, in the suburbs of the city, with an adjoining farm for the employment of the paupers in horticultural and agricultural pursuits. That this establishment has cost about twenty thousand dollars, and they deem it unjust to be again taxed for the erection of a county poor-house.

It is likewise stated that there often are in this establishment many old and unfortunate citizens of Albany, who have seen better days, and in the habit of being visited by their relatives and connexions; and the memorialists would regret to see the government of this establishment, or the tenants in the same, pass out of the hands of the city authority. But this they have reason to apprehend would be the case under the management of the county board of supervisors.

The memorialists believe it would be promoting the cause of charity by granting their application; as they would, in that case, be able and willing, by their local revenue, to support the resident and transient poor. And also be able to dispense temporary relief to indigent sufferers, at their own homes, during the inclement season of the year; which they would not be able to do out of the general fund from county poor.

The committee are of opinion that there are strong reasons for granting the prayer of the memorialists. And in pursuance of that opinion have prepared a bill, and ask for leave to introduce the same.

**No. 39.**

**IN SENATE,**

**February 7, 1832.**

**MEMORIAL**

**Of Dr. Samuel White, praying for aid to the Hudson  
Lunatic Asylum.**

**TO THE LEGISLATURE OF THE STATE OF NEW-YORK.**

The petition of the subscriber, proprietor of the lunatic asylum in  
the city of Hudson,

**RESPECTFULLY SHEWS :**

That he presented to the last Legislature a petition for aid to  
that institution, to which he begs leave now to refer.

The period having arrived when a systematic report may with  
propriety be made public, he avails himself of the privilege of intro-  
ducing this important subject to the notice of your honorable body,  
and appends hereto a particular report of the operations of the insti-  
tution since its establishment in July, 1830.

To arrive at results so favorable, untiring efforts have been made,  
and every consistent indulgence and comfort granted. The expense  
necessarily attendant upon furnishing and providing for such an es-  
tablishment, thus far, greatly exceeds the receipts. The memorial  
of last winter, acted upon but in part, and which is referred to as  
above, set forth the present as well as the then wants, superceding  
the necessity of a more minute detail.

Suffice it to say, that aid granted by your honorable body, at this  
time, will go far to give permanency to this institution.

**S. WHITE, M. D. Proprietor.**

**Feb. 6, 1832.**

**[S. No. 39.]**

## STATEMENT

*Of cases at the Hudson Lunatic Asylum, from July 1st, 1890, to Jan. 1st, 1892, a period of one year and six months since the opening of this Institution for the reception of patients.*

Forty-eight cases have been admitted, to wit :

|                     |       |
|---------------------|-------|
| Old cases, .....    | 26    |
| Recent cases, ..... | 20    |
| Intemperate, .....  | 2     |
|                     | <hr/> |
| Total, .....        | 48    |
|                     | <hr/> |

Thirty-four have been removed during the above time, to wit, old cases removed :

|  |       |
|--|-------|
| Recovered, .....   | 3     |
| Improved, .....  | 3     |
| Stationary, .....  | 8     |
| Removed within two weeks, friends not complying<br>with the rules, ..... | 1     |
| Dead, .....  | 2     |
|  | <hr/> |
| Total, .....   | 17    |
|  | <hr/> |

Recent cases removed :

|   |       |
|---|-------|
| Recovered, .....                          | 14    |
| Removed within two weeks, as above, ..... | 1     |
| Dead, .....                               | 1     |
|   | <hr/> |
| Total, .....                              | 16    |
|   | <hr/> |

Intemperate case, reformed, .....

1

Old cases remaining :

|                               |       |
|-------------------------------|-------|
| Much improved, .....          | 3     |
| Stationary, .....             | 6     |
|                               | <hr/> |
| Carried forward, total, ..... | 9     |

|                                    |       |
|------------------------------------|-------|
| Amount brought forward,.....       | 9     |
| Recent cases remaining, .....      | 4     |
| Intemperate, reformed,.....        | 1     |
|                                    | <hr/> |
| Total of all cases remaining,..... | 14    |
|                                    | <hr/> |

## SUMMARY.

|   |       |
|---|-------|
| Recovered,.....   | 17    |
| Much improved,.....   | 6     |
| Stationary, .....   | 14    |
| Removed within two weeks, friends not complying with<br>the rules, .....                          | 2     |
| Dead, .....   | 3     |
| Intemperate reformed,.....  | 2     |
| Recent cases remaining, with prospect of recovery by<br>the expiration of the first quarter,..... | 4     |
|   | <hr/> |
| Total,.....   | 48    |
|   | <hr/> |

S. WHITE, M. D. Proprietor.



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**IN SENATE,**

**February 8, 1832.**

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**REPORT**

**Of the committee on the judiciary, on resolutions from the Assembly, proposing amendments to the constitution.**

The committee on the judiciary, to which were referred two resolutions, from the honorable the Assembly, proposing amendments to the constitution of this State,

**REPORTED :-**

That although each of the resolutions contain an allegation that the respective propositions for amending the constitution have been published pursuant to the eighth article of the constitution ; yet the committee have been furnished with no satisfactory evidence of such publication.

The eighth article of the constitution provides that, “any amendment or amendments to this constitution may be proposed in the Senate or Assembly, and if the same shall be agreed to by a majority of the members elected to each of the two Houses, such proposed amendment or amendments shall be entered on their journals, with the yeas and nays taken thereon ; and referred to the Legislature then next to be chosen ; *and shall be published for three months previous to the time of making such choice.*”

Your committee, on enquiry, have ascertained that there has been no general publication of the proposed amendments, and that unless an insertion of the resolutions proposing such amendments in the State paper, in its ordinary publication of the laws and proceedings of the Legislature, or the insertion thereof among the acts of the last session, and published with them in the statute book, is to be

regarded as a publication, then there has been no adequate publication.

Your committee have no doubt that the object of the provision requiring three months publication of all proposed amendments of the constitution, was to bring the question immediately before the electors, that they might elect their representatives in express reference to the amendments proposed.

By referring to the proceedings of the convention that formed the constitution, it will be found that it was proposed to give six months notice of all proposed amendments ; but three months was finally adopted as the term for which notice was to be given.

In the opinion of your committee an actual, not a constructive notice, was intended by the framers of the constitution ; and a single insertion in the State paper, or printing the resolutions proposing an amendment, among the statutes of the session, does not, in the opinion of your committee, constitute such a three months publication as the constitution contemplates.

It gives no adequate notice to the electors ; and with such a publication your committee believe scarcely one among five hundred voters would be acquainted with a proposition to amend ; unless such proposition should be one of deep and abiding interest to the great body of the people.

The framers of the constitution in omitting to prescribe the manner of giving notice, undoubtedly intended to leave it to the Legislature to direct the mode ; and when propositions for amendment are adopted, it would, in the opinion of the committee, be a discreet exercise of legislative authority to direct what notice should be given.

Your committee are not to be understood as asserting that a legislative direction, in regard to publication is absolutely necessary : but they have no doubt that the spirit and intent of the constitution is to give such a notice to the electors as to call their attention particularly to the amendment proposed, and that such notice should be given for three months before the election.

In proposing amendments to the constitution in 1825, (Senate Journal 1825, page 563,) the Legislature, by concurrent resolution, directed the Secretary of State to cause notice of the amendments to be published for three months, in the State paper ; and also in a

paper in each county of the State, where one was printed, and to furnish evidence of such publication to the then next Legislature.

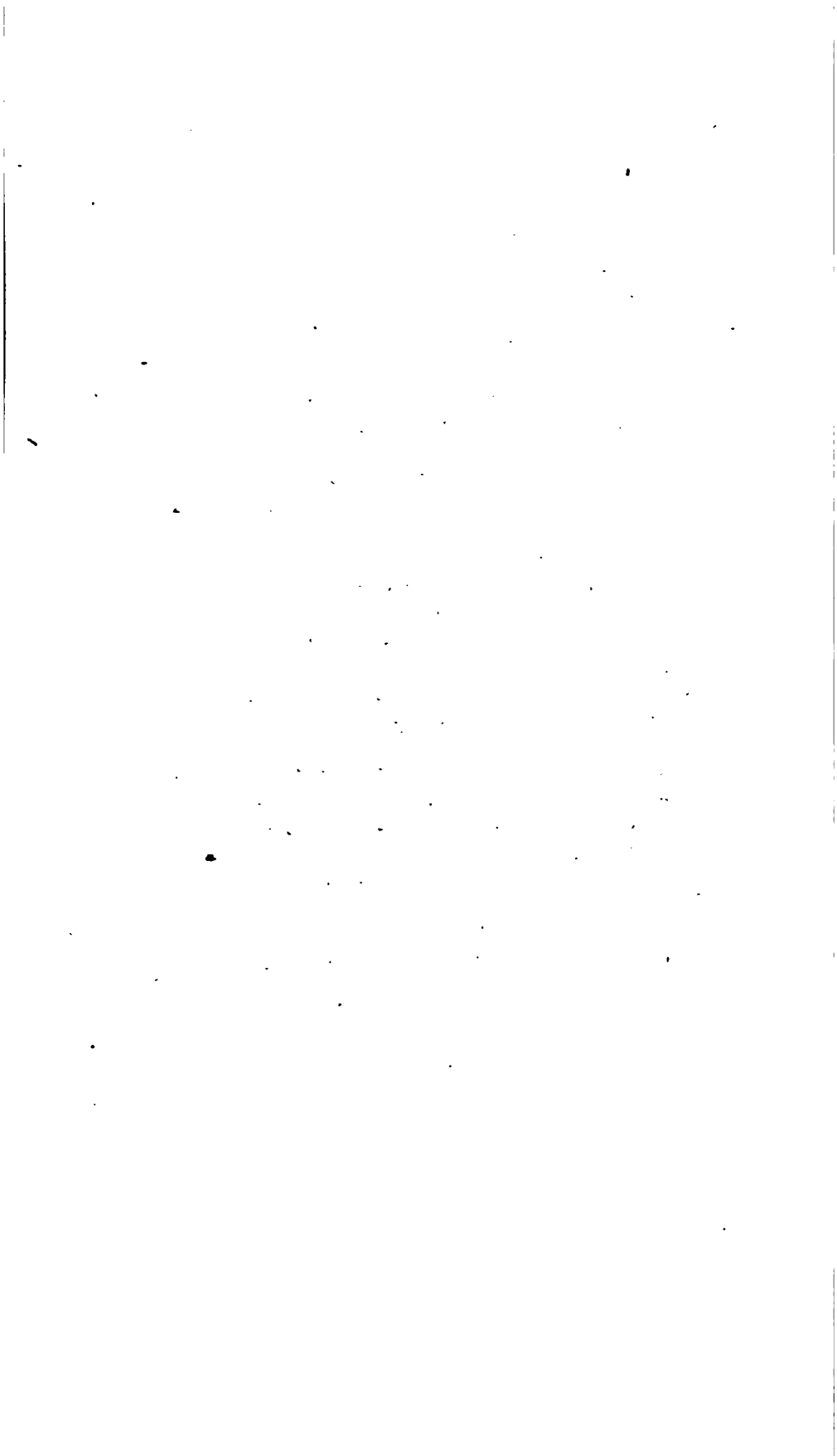
By referring to the report of Mr. Colden, chairman of the committee on the judiciary of the Senate, in 1826, (Senate Journal of that year, pages 30, 31 and 42,) it will be seen that such notice was given and evidence furnished, which was considered, by the Legislature, as a compliance with the concurrent resolution of the preceding session.

In that case a legislative construction was given, that an actual and general publication of notice was discreet and requisite; and your committee deem it prudent not to narrow the publication of notice, unless directed by the Legislature proposing subsequent amendments.

In regard to the amendments now under consideration, no directions for publication were given by the Legislature, and however desirable such amendments may be, the committee can not recommend that, in accomplishing the most solemn act a government can perform, (to wit, the changing of its constitution,) a mere technical or constructive notice shall be deemed sufficient, when they are satisfied an actual and general notice was intended.

The present proposed amendments have not excited any particular attention, except in the immediate vicinity of their operation, yet your committee do not consider that as affording a satisfactory reason for departing from a former salutary precedent, particularly as such departure may hereafter be considered a precedent for more important and exciting amendments.

Your committee, therefore, report against the adoption of each of said resolutions.



**No. 41.**

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**IN SENATE,**

**February 8, 1832.**

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**REPORT**

**Of the committee on banks and insurance companies, on the petition of E. B. Shensman and others.**

The committee on banks and insurance companies, to which was referred the petition of E. B. Shensman and others, for the incorporation of an insurance company at Utica,

**REPORT:**

That the petitioners request to be incorporated by the name of the Tanners' Fire Mutual Insurance Company, with a capital of \$500,000, and with liberty to increase said capital at pleasure, to an amount not exceeding \$500,000.

There is at present no insurance company in the county of Oneida, and the utility of such an institution, in a place like Utica, where there is always a vast amount of property subject to the casualty of fire, can not be questioned.

In 1816 there was a company chartered by the Legislature, under the name of the Utica Insurance Company. Having no location designated by its charter, and some of its provisions appearing liable to a construction favoring speculation, the office of the company was removed to New-York, where it exploded, with several others of a more recent date, to the great injury of many of our citizens who had confided in their solvency.

The committee are in favor of chartering an insurance company, with proper restrictions, to be located at Utica; but they object to the name, or designation of the company, proposed by the petitioners. They think that a monied institution, chartered for its public

utility, and not for private uses, ought not to be confined to, or controlled by, any particular profession of our fellow-citizens: and although it may not be the intantion of the applicants to give the institution that direction, it nevertheless has the appearance of partiality, and the committee therefore propose to designate the corporation by the name of the Oneida Insurance Company.

The committee also object to the authority requested, to extend the capital from time to time, ~~until it shall amount to \$500,000.~~

The objections are, 1st. That \$250,000, the sum fixed on by the committee, is an amount sufficient for every legitimate purpose of insurance, for the present at least, and as the committee believe, for many years to come: 2d. That should the company be prosperous, and the price of its stock be held much above par in the market, a temptation will be produced, which may lead the directors to create capital, merely for the purpose of speculation, while the true interests of the company may not require an addition to its stock: and 3d. If more capital should be wanted hereafter, and the Legislature are satisfied of the fact, there will, in the opinion of the committee, be no difficulty in obtaining an act for that purpose.

The committee have therefore prepared a bill, conforming with their views on the subject, and have directed their chairman to ask leave to introduce the same.

**IN SENATE,**

**January 26, 1832**

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**REPORT**

**Of the committee on claims, on the petition of the heirs of David Barnes, a revolutionary soldier.**

Mr. Hubbard, from the committee on claims, to which was referred the petition of the heirs of David Barnes, a revolutionary soldier, praying for bounty lands,

**REPORTED :**

That it appears by Nealy's book, in the office of the Secretary of State, that David Barnes enlisted in Hanson's company, Livingston's regiment, New-York line, for during the war, and was mustered up to 1781. The affidavits of Slovon, Lent and Whatin, all go to show that Barnes died at Albany, in the service, though there is some variation in the affidavits as to the time of his death. That Barnes enlisted during the war, and served until 1781, is certain; and that he died in the army is equally certain, if reliance may be placed on the affidavits.

The committee have therefore concluded to introduce a bill for the relief of his heirs; and as there are no bounty lands remaining, they propose to pay them the value in cash.





**IN SENATE,**

**February 10, 1832.**

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**REPORT**

**Of the committee on the division of counties and towns, on the petition of the inhabitants of the town of Arlington, county of Tioga, to change its name.**

The committee on the division of counties and towns, to whom was referred the petition of the inhabitants of the town of Arlington, county of Tioga, to change its name to Richford,

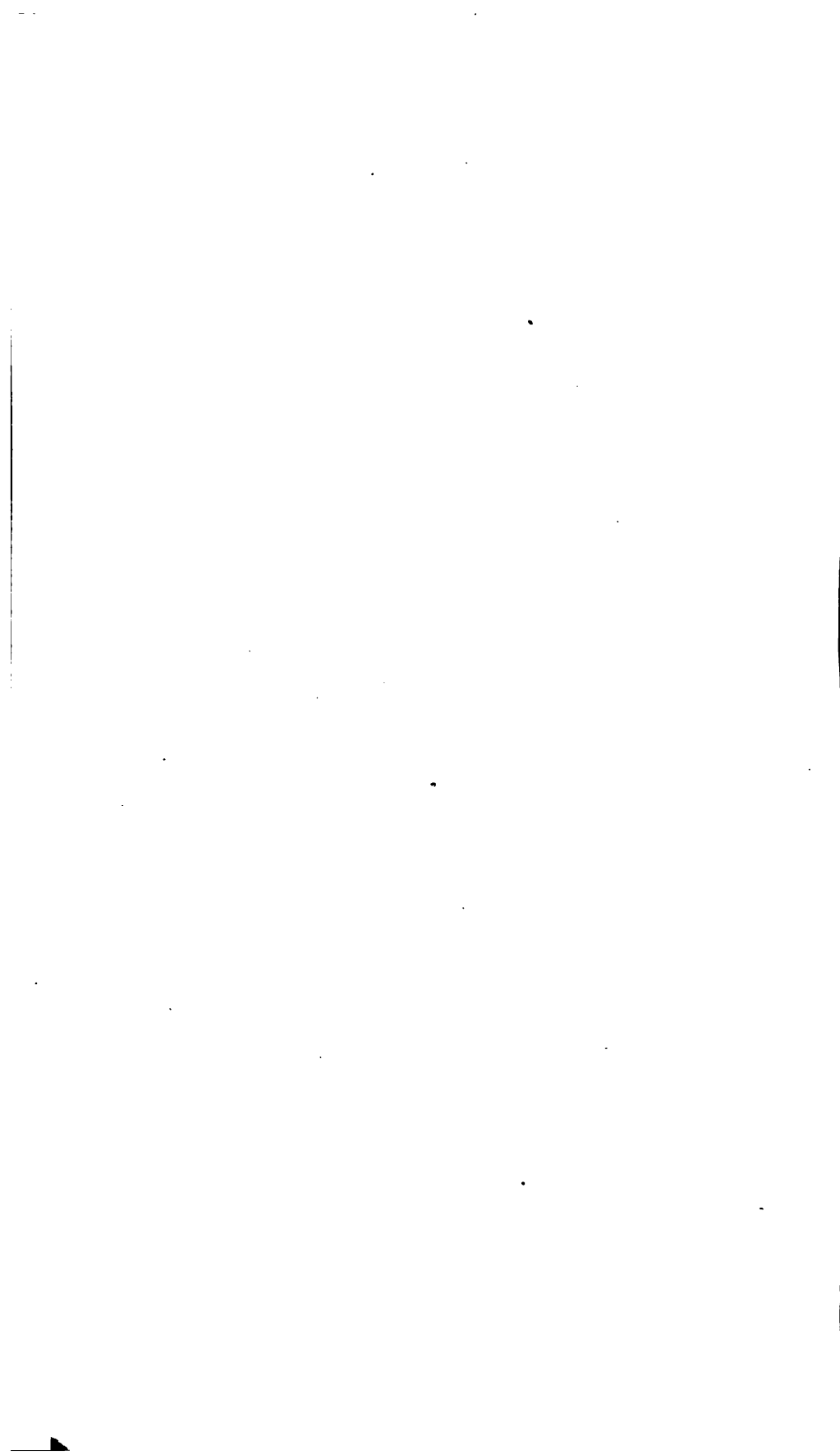
**REPORTED :**

That about the centre of said town is situate a village, which has been known and distinguished for about ten years by the name of Richford ; that the public business is done at that place, and the only post-office in the town is called the Richford post-office.

That the town was first settled by an enterprising individual by the name of Rich, after whom the said village and post-office was called ; and that by the almost unanimous wish of the inhabitants of the said town, the petition presented last year to erect the new town, requested it to be called Richford.

That the bill passed the Assembly by that name ; and afterwards, for what reason your committee cannot positively ascertain, it was changed in the Senate to the fancy name of Arlington.

Your committee can see no reason why the prayer of the petitioners should not be granted, and have therefore directed their chairman to bring a in a bill to that effect.



**No. 44.**

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**IN SENATE,**

**February 11, 1832.**

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**REPORT**

**Of the Comptroller, on a bill entitled "An act respecting auctioneers in the city of New-York," referred to him by the Senate on the 25th April, 1831.**

**COMPTROLLER'S OFFICE, }**  
**Albany, 11th February, 1832. }**

**The Hon. EDWARD P. LIVINGSTON,**  
***President of the Senate.***

**SIR—**

Herewith I have the honor to transmit a report, made in obedience to the resolution of the honorable the Senate, of the 25th of April last.

I am with great respect,

Your obedient servant,

**SILAS WRIGHT, JR.**



# REPORT, &c.

STATE OF NEW-YORK, }  
COMPTROLLER'S OFFICE. }

In obedience to the resolution of the honorable the Senate of the 25th of April last, to wit:

*“Resolved, That the engrossed bill from the Assembly entitled ‘An act respecting actioneers in the city of New-York,’ together with the documents accompanying said bill, and the amendments offered in committee of the whole, be referred to the Comptroller, with instructions to inquire and report to the next Legislature on the subject generally whether any further, and what provisions of law are necessary to regulate sales at auction, and to prevent frauds at such sales, and to protect the revenue arising therefrom.”*

The Comptroller respectfully submits the following

## REPORT:

The subject referred is one of intrinsic difficulty, and the very partial acquaintance of the Comptroller with auction sales generally, and with the practices of the auctioneers, either in the city of New-York or elsewhere, renders it much more difficult to him than it would be to one whose location, or business, or profession has furnished the required information. It will not be singular, therefore, if the suggestions he may make shall tend rather to prove his want of familiarity with the subject, than to point out the evils which really exist, and the appropriate remedies for them.

Still the requirement of the Senate is, as it ought to be, imperative upon the Comptroller, and he will proceed to the discharge of the duty assigned, according to the best of his ability, and with the information he does possess, only asking that his failure to answer the expectations of the Senate should be imputed to his want of acquaintance with the subject, and not to his want of a disposition to contribute all the aids in his power to the furtherance of wise legislation upon the matter referred.

The duties of this office connected with the collection of the revenue arising from auction sales, necessarily bring to the knowledge of the Comptroller many complaints of abuses of the trusts confided to the officers charged with the administration of the law regulating sales at auction, and many actual violations of that law by those officers. But it is due to truth to say, that when efforts have been made to obtain legal proof to sustain most of the complaints, witnesses have not been found, and a general disinclination has been manifested to communicate information, evidently possessed, in a manner to render it available to a prosecutor under the penal provisions of the law. Most of the complaints, though entirely specific in their character, have reached this office without the responsibility of any name, and those which have been accompanied with the name of the complainant, have usually been coupled with injunctions of secrecy, which has prevented the use of the facts disclosed, if facts they were, to the accomplishment of any valuable purpose. Complaints, however, of the one or the other of these descriptions, have been so frequent, during the whole official term of the Comptroller, as nearly to entitle them to the appellation of constant complaints; and as in many cases the names of persons, said to be witnesses who could testify to the facts charged, have been given with the charges, so a great variety of persons and cases have been, pursuant to the 40th section of the present auction law, reported to the district attorneys of the proper counties. The principal part of the complaints having proceeded from the city of New-York, and having related to abuses by auctioneers commissioned for that city, most of these reports have been made to the district attorney of that county. In a few cases these reports of violations of the law have resulted in explanations exhibiting pretty satisfactorily the ignorance, instead of the bad faith, of the officer, and prosecutions have been suspended by the district attorney, upon his being satisfied upon this point, and upon the further evidence, furnished from this office, that the delinquent had done every thing in his power to make atonement for the delinquencies complained of, by filing his returns, paying the duties in arrear, and otherwise manifesting a determinate intention to comply fully with the law, when informed what its requirements were. But in the great majority of cases, and especially in New-York, the efforts, in this manner, to punish delinquencies and violations of the law, have proved wholly abortive. At the last interview between the Comptroller and the district attorney of that city and county upon this subject, but one indictment had been presented, from the

large number of cases reported, and that one, according to the Comptroller's present recollection, was against an auctioneer not only notoriously insolvent, but who had left the jurisdiction. Not a penalty has been recovered to the knowledge of the Comptroller, and the district attorney has expressed his convictions that the penal parts of the law, in the present state of feeling in that city, in reference to auction sales, can not be enforced, and that the only efficient check must be found in the selection of the individuals to be commissioned.

That the opinion is honestly entertained by intelligent citizens that this check may be made a sufficient remedy for the unquestioned abuses in sales at auction in the city of New-York, the Comptroller does not doubt, but he is compelled to say that his own experience satisfies him that the opinion is erroneous, and that the desired certainty of the correction of abuses, and of the collection of the legitimate revenue from these sales, must be sought after in the exercise of some function of the government, different from that of the appointing power, or it will not be found at all. That every precaution should be used in the selection of individuals to fill these offices is most freely admitted; but that this vigilance in the ablest hands, and aided by the combined care of the Governor and the Senate, can accomplish the object, is not believed.

For this opinion, which might otherwise seem to be a reflection upon the two branches of the Government referred to, a reason should be assigned, and it is given as follows: The office of auctioneer is one deriving neither salary nor perquisites directly from the treasury, but the emoluments, though in some cases undoubtedly far greater than the compensation by way of salary paid to any individual in the State, arise solely from commissions and charges made by the officer for acts which his office authorises him to perform, and which the law prohibits all citizens, not holding the commission of an auctioneer, from performing, and these commissions and charges are limited by the statute, where they are not regulated by previous contract, or by the competition with which he meets from others possessing equal authority with himself. No peculiar honor is conferred with the office or the exercise of the duties, and profit, therefore, must be the prominent inducement in the press for these appointments. These positions being admitted, the consequence is unavoidable that the cupidity of the individuals applying for commissions as auctioneers, and of the successful applicants, is



the passion most in exercise, and to which strength and force is given in those who succeed. This passion therefore must be gratified by the profits of the office, or disappointment, equal, or nearly so, to that of a failure in the application follows. This disappointment, or a measurable realization of his sanguine expectations, is held by the officer to be a matter dependent upon his own acts and within his own power. Hence a false standard of morality in relation to the public trust is created. He looks upon the commission as a mark of peculiar personal respect and favor, and almost considers profit to himself the moving cause in the minds of those who conferred it, and a failure to realize that profit a defeat of those kind and friendly intentions. He partially forgets that an important branch of the public revenue is entrusted to his care, and depends upon the faithfulness of his official conduct for its collection, and soon begins to look upon the trifling duties imposed upon his sales as, to their full extent, impediments to his success and deductions from the profits he might otherwise receive without injury to the interests of his customers.

From this state of feeling, the transfer must be easy to a disposition technically to canvass every provision of the law, with a view to reduce what are considered its exactions within the narrowest possible limits, and to exempt from duty every thing, which can by the broadest construction of the language of the act, be so exempted. This being accomplished in a manner satisfactory to a mind thus perverted by selfishness and a desire for personal profit, other provisions of the law undergo the same canvass, and are made to contribute to the same mischievous results. Finding the business at one regularly established and duly registered office less lucrative than his sanguine hopes had induced him to expect, the unsettled auctioneer is persuaded to lend his services to a neighbor who has property he wishes to expose to sale at his own store, partly for the purpose of trying a disposition of his wares by a public auction, but principally, by collecting purchasers at such a sale, to render his shop or his store more extensively known, and to make it the resort for additional customers. A sale is therefore held in direct violation of the law, at a place different from the registered store or office of the auctioneer, and to excuse the breach of duty, a box of shoes or a case of hats, brought from a neighboring State, or some other article of a less plausible character is made to constitute a "package sale" within the meaning of the 18th section of the law. These customers multiply, and it soon becomes inconvenient for the officer to accommodate

all at the times and in the manner they wish, and inconvenient for the customers to seek the officer when it may suit their views to have a sale. An arrangement is accordingly made for the mutual accommodation of the interests of both : the auctioneer is paid a stipulated sum for the use of his name and his commission, and the customer is constituted a nominal clerk or partner and conducts his sales in his own way ; determines for himself what is and what is not dutiable ; makes the account of his own sales, if any is made ; and the conscience of the officer contents itself with his representations, in subscribing to the oath annexed to his returns. If the correctness of this proceeding be brought into question, the officer defends himself by the allegations that he has the example of others to support his practice ; that the aggregate of auction sales are increased, and consequently that the aggregate of duties added to the revenue is also increased by the operation ; that the spirit of the law therefore is preserved, if its letter be violated ; that his office affords him, even under this course of management, little profit : and in many cases that he has never read the law, and has remained in entire ignorance of its provisions.

These are not fancied reasons and conjectural apologies for the violations of the auction law referred to in the remarks. They have been received by the Comptroller from the auctioneers themselves, and from those who have purchased the use of these commissions. The latter offenders always urge their ignorance of the law, and justify their conduct by insisting upon the confidence reposed in the officer, and the conviction that he did or ought to know his powers, rights and duties.

During the official term of the Comptroller, no effort in his power has been spared to break up the practice of farming out these commissions in the city of New-York, by remonstrating with the auctioneers suspected of, or charged with the practice, and also with the persons availing themselves of the illegal privilege ; by reporting the cases to the district attorney of the city and county, and by putting the Governor upon his guard as to those persons who have been ascertained to have indulged in repetitions of the offence. Still he is compelled to say, that his information goes far to establish the belief that this particular abuse is in no degree checked, but is gradually and constantly extending itself in that city : And hence the conclusion that some check, other than the utmost possible vigilance of

the appointing power, must be sought, or that an efficient remedy will not be found.

It should by no means be understood that these remarks apply to all of the auctioneers of the city of New-York, or even to any individuals now in commission especially. The conclusions expressed, and the reasons which support them, have been drawn from the partial acquaintance which the official duties of the Comptroller, for the last three years, have compelled him to form with these officers and their practices. From this acquaintance he has been induced to believe that the violations of the law complained of have not existed with those auctioneers who have found their business lucrative, and the income of their offices such as to realize their expectations. It should also be added, and the remark is made with peculiar gratification, that there have been others, in all the years, who have either not taken their commissions at all, or who, having taken them and not finding legitimate employment, have suffered the office to remain a nominal one upon their hands as their returns regularly show, while no complaint of abuse has been heard against them, and it is confidently believed no foundation for such complaint has existed. Others, too, have not only taken their commissions, but have used them as occasion has offered, without any considerable profit, and without the charge of illegal practices. These facts have produced in the mind of the Comptroller a further conviction, which is that the present number of auctioneers, as limited by the law, are fully equal to the real necessities for those officers in New-York. Were it not so, he is unable to comprehend why commissions should, every year, remain untaken ; why the necessity of a resort to illegal practices should exist to render many of those profitable which are taken ; why many others, resting in hands which will not make this resort, yield very trifling sums either to the officer or the revenue ; and especially why officers in commission in that city should regularly return, from quarter to quarter, that they have not made a sale at all.

But to arrive more directly at the objects of the reference, it may be best to enumerate more precisely the evils which exist, or are complained of, and for which remedies are to be sought. As connected with the safe collection of the revenue, the principal are believed to be the following :

1st. The practice of holding sales at places different from the regularly registered house or store of the auctioneer, contrary to the provisions of the 17th and 18th sections of the existing law.

2d. The practice of farming out commissions, or of selling to persons not in commission, the right to use the name and authority of the auctioneer in making sales at auction.

3d. The practice of returning, as free from duty, articles which have been sold and which are not exempted by the law.

4th. The practice of making a sale at auction of a small parcel from large lots of merchandize and other property, as a mode of establishing a price, and leaving the residue of the lot to be taken at private sale at the price so fixed without the charge of duties.

5th. The difficulty of enforcing the penal provisions of the present law.

The evidence of the existence of the practice mentioned in the first of the above enumerations is derived from the auctioneers themselves who have indulged in the practice, and who usually urge their ignorance of the law, while they admit the violation.

The evidence of the practice secondly enumerated has not been so easily or so abundantly obtained, though there have been instances where both the officer and the person buying the use of the commission have admitted the existence of the bargain; and there have also been several cases where the purchaser of the franchise has exhibited the written evidence of his contract, under the hand of the auctioneer, as evidence upon which he relied for his own indemnity. In one case, during the past season, one of these individuals presented himself at this office, with this written evidence, and with a statement of sales made by him, and of duties which he said he ought to pay, alleging that the auctioneer refused to receive the statement and to make return of it. The Comptroller did not consider himself authorised to receive auction duties from any but a regularly commissioned auctioneer, and the statement was withdrawn.

The third practice specified, so far as the information of the Comptroller extends, relates mostly to the sale of books. This article now is, and has constantly been, one of very considerable importance, in the aggregate of auction sales in the city of New-York, as the quarterly returns of sales regularly show. Still, by a construction of the exemptions of the present law, all books manufactured,

or in other words printed and published, in the United States, are held to be free from duty, and are so returned by the auctioneers. An entire different understanding of the law has been entertained by the Comptroller, as he finds was the fact with his predecessor in the office, and many efforts have been made to learn under what clause of the exemptions this article was held to be embraced. A great want of uniformity has been found in the answers of the different officers, and not unfrequently an allegation of ignorance of the law and a subservience to what seemed to be an established practice, has been offered as a reason for the return, rather than any operation of the mind or the conscience of the officer dictating the form, or weighing the import, of the oath which the law required him to connect with that account of his official proceedings. Others, however, apparently better prepared to meet a scrutiny which seemed to have been expected, have claimed that books were "fabrics of cotton," within the meaning of the 4th subdivision of the 4th section of the law, and therefore, if printed and published within the United States, they were "manufactured within the jurisdiction of the United States," within the meaning of the same law, and thus exempted from duty.

The soundness of this construction of that exemption is respectfully submitted to the Legislature, but the Comptroller feels it his duty to express his dissent from its correctness, and to recommend, in case the Legislature shall believe that it was the design of that section to exempt books from auction duty, as "fabrics of cotton," that some more specific enactment may be made to direct him and the auctioneers to a correct construction of it; as he thinks there are a great variety of articles now held to be chargeable with duty, if manufactured in other States than our own, which have as strong a claim to be considered "fabrics of cotton, wool, hemp or flax," as books can have to be "fabrics of cotton."

Complaints have been made that the practice fourthly enumerated prevails with the auctioneers in the most extensive business; but the evidence to support these complaints has not been very satisfactory. Enough, however, has been shown to produce a reasonable apprehension that such a practice does prevail; and if so, it will be apparent that its effect upon the revenue must be very considerable.

Upon the subject of the difficulty of enforcing the penal parts of this law, through the efforts of the district attorneys of the counties, the Comptroller has nothing to add to the remarks already made.

Such are the evils which have suggested themselves, as connected with the collection of the revenue legitimately to be derived from sales at auction, and such are the evidences in the possession of the Comptroller of their existence.

The papers referred contain a variety of complaints, solely confined to "petty" or "retail" auction sales, and the number of the petitioners for relief, and the remote sections of the State from which the representations came, taken in connection with the almost perfect uniformity of their character, entitle them to careful consideration. They are, however, entirely disconnected from the considerations of revenue, and relate to the effect of these retail auction sales upon the public morals, upon the industry of the country, and especially upon the fair employment of mechanical skill and labor, upon the enterprize and success of the regular merchant and retail trader, and upon the interests of the poor and laboring classes. A substantial enumeration of these complaints is,

1st. That the collection of numerous bodies of citizens at the petty auctions promotes a spirit of gambling, idleness and intemperance, and thus injures the public morals :

2d. That articles of furniture, clothing and ornament, of an inferior quality as to material and workmanship, are offered at these auctions, and sold below the real cost, notwithstanding the inferiority of the article, and that thus the regular mechanic, whose professional character is pledged for the quality of the goods he offers his customers, and who must, therefore, demand a price proportioned to their value, loses a market, and becomes discouraged in the faithful prosecution of his trade :

3d. That the village merchant and retail trader finds an imitation of his genuine goods offered through those auctions to his customers, at prices far below the cost of the faithfully manufactured article, by which his business is destroyed or greatly injured, while the description of the goods thus disposed of, without any known or pretended responsibility, are such as to prevent an attempt at competition, from any business man having any respect for his character and the confidence of those with whom he deals :

4th. That gross frauds are practised ; that sales are made in a hurried manner, and without giving time for examination ; that articles are manufactured for the express purpose of finding a market in this way ; that every possible deception is practised, both in the material and in the workmanship ; and that in this way, the poor and laboring classes are defrauded out of their earnings, under the delusive expectation of buying cheap.

Of the foundation of these complaints the Comptroller has no other information than that contained in the papers referred, as he has never been called to a personal acquaintance with these auctions ; and the revenue arising from them is so trifling that, except in the city of New-York, and that in consequence of the abuses before related, his attention has not been officially directed to them. Still the petitions speak explicitly of the facts, and the number of the signers, and the known respectability of some of them, recommends the subject to the patient consideration of the Legislature. To that body these appeals are properly made ; and while the collection of the revenue, from auction sales, is partially within the charge of the Comptroller, and he might be supposed to be in some degree acquainted with the operation of the existing laws, as applicable to the safety of these collections, he does not understand that the Senate could have expected from him any information in reference to the present system of auctions, separate from considerations connected with his duties under the law. He does not, therefore, suppose it to be his duty further to remark upon the complaints contained in the petitions, except as the subjects of those complaints may be incidental to, or connected with, such suggestions as he may find it necessary to make with reference to the security of the revenue.

The existing evils having been pointed out, it remains to examine the remedies provided for them by the present law ; to inquire into their efficiency ; and to see if others can be suggested, where they fail, more likely to accomplish the desired object. This will be done in detail, and in the order in which the difficulties have been enumerated.

First, then, comes the practice of holding sales at places different from the regularly registered house or store of the auctioneer, and at more than one house or store, by the same auctioneer, in violation of the 17th and 18th sections of the present law. The remedy for this offence, provided by the law, is contained in the 19th sec-

tion, and consists in declaring the violation of either of the two former sections a misdemeanor, "punishable by a fine not exceeding two hundred and fifty dollars for each offence." The delinquent must be presented *criminaliter* to the grand inquest of his county, he must be indicted, arraigned and formally tried upon the issue of "not guilty," before this penalty can be imposed. The matter then becomes one more of character than of interest, and the exertions of the defendant, the reluctance of witnesses and the sympathy of the triors are graduated, not by the possible amount of the penalty, but by the imaginary effect upon the feelings and standing of the accused. The offence appears, at once, trifling and inconsiderable, the consequences of a conviction severe and dreadful. The objects to be accomplished are sought after and canvassed. The violation complained of, it is reasoned, has taken place and can not be mended by a recovery of the utmost penalty. The money to be recovered is appropriated to the support of the poor of the county, for whom ample provision is otherwise made. No private interest is to suffer by the failure of the prosecution, and the public treasury is not to be enriched by its success. Why then pursue an individual whose fault is, perhaps, that of ignorance, or from whose act, though a violation of the law, no known injury has arisen to the revenue or individuals? Reasoning like this is believed to operate against the regular enforcement of the penalties imposed by this law, and certain it is that, from this or some other cause, it has not been found practicable to obtain presentments in most of the cases reported by the Comptroller to the district attorneys. It is by no means intended by these observations to cast any imputation upon courts and juries, or their officers, in any case: nor is it designed that an inference should remain that they are more lenient, or less rigid, in the discharge of their high duties in these than in any similar class of complaints, which appear before them, clothed with the name and solemnity of crime. In all this description of cases experience has always shown that the best feelings of the purest man are first elicited, and when those feelings, acting upon a benevolent mind, do not discover any danger to the public peace, any injury to the public treasury nor any sacrifice of private rights, it is not singular that they should lean to the exculpation of an accused individual, without making minute research for secondary causes to justify a presentment or conviction.

Such has been and still is the view which the Comptroller has taken of the difficulties in executing the present law, especially in reference to the violation now under discussion, and which is un-



doubtedly the most mischievous of all the violations commonly practised.

He is therefore inclined to the opinion, that the present law may be materially and beneficially amended, as it regards the prevention of this particular practice, by a change of the character of the penalty and the mode of recovering it. His suggestions upon this subject are,

1st. That the penalty, instead of being one following an indictment and conviction for a misdemeanor, should be a positive penalty, not as now dependent upon the discretion of the court, but fixed and certain in its amount, and recoverable in an action of debt in the usual form of these actions between individual and individual.

2d. That the condition of the bond of the auctioneer should be so modified as to render the bail liable for any penalty, of a purely pecuniary character, which should be recovered against the principal.

3d. That the appropriation of the penalty should be changed from the support of the poor of the counties, to which it yields nothing, to the treasury of the State, to which it should go, if it is designed to make good a convicted fraud upon the revenue to be protected.

4th. That the prosecutor for these penalties should be changed from the district attorneys of the counties, to the Attorney-General of the State, and that the venue in any such action should be subject to the rules which, in that respect, govern personal actions in our courts.

These suggestions followed out will make the violation, what the Comptroller supposes the principal inducement to it is, a mere matter of interest with the officer, and will add the vigilance of his sureties to the other guards against his misconduct. If then a faithful administration of these duties should not be entirely secured, the recovery of the penalties, the bail being responsible for them, would probably indemnify the public treasury, while the recorded conviction of the officer would be accessible evidence to the appointing power, against known and ascertained evils, and the harmonious action of the executive authority and the courts of justice might effect what neither separately could accomplish.

The second practice complained of, is that "farming out commissions, or of selling to persons not in commission, the right to use

the name and authority of the auctioneer in making sales at auction." This is a practice not even contemplated by the law, and therefore no specific penalty is imposed upon it. Indeed the practice of selling offices is so strictly prohibited in all our constitutions of government, and is so entirely repugnant to the policy of our laws and to the feelings of our citizens, that the omission to provide against it in express terms in the existing law, rather displays a laudable confidence in the public morals, than a defect in the sagacity of the legislators who made the enactments. But considered in reference to the law, as it is, this offence undoubtedly resolves itself into the one last considered, as it would be preposterous to suppose that an auctioneer would sell, or that a purchaser could be found who would buy, the right to use the commission and to make sales in the house or store regularly registered and used by the officer himself. In all these cases, therefore, the facts have shown, what the necessity of the case required, that the sale of the franchise left the purchaser to his own election as to the place of exercising it, and thus, by virtue of one commission, a variety of auction rooms have been opened and daily used at the same time. In New-York, where all sales at auction are to be made by auctioneers only, it is true that this practice subjected both the officer and the purchaser of the power, or assumed power, to sell, to penalties and punishment; the officer upon the authority of the maxim, that what a man does by another he does by himself, and therefore, that he was holding sales at places, other than his duly registered house or store, and at more than one place at the same time; and the purchaser as violating the 7th section of the present law.

But the penalties and punishment in both cases, are of the description before remarked upon, and the difficulties in enforcing them, are therefore, liable to the same comments. As, however, the opinion is entertained that very few, if any persons in that city, attempt to make sales at auction, without either a regular commission as auctioneer, or this false authority from a person holding a commission, it is believed, that any law which should confine these officers to their registered houses and stores, as the places to make their sales, and which should also restrain them from assuming to empower others to sell in their names, would remedy this evil. The suggestions, therefore, made under the last head, are again referred to, as the most efficacious remedy in this instance, also. Address the laws and their immediate operation to the governing principle, the interest of the officer and his sureties, and the existing

penalty, made recoverable in an action of debt, with a change of the application of the money, a certainty of the amount, and a transfer of the power of prosecution to the Attorney-General, it is confidently believed, will be sufficient to prevent sales by those having no pretence of authority.

The third practice enumerated, is that "of returning as free from duty, articles which have been sold, and which are not exempted by the law." Books are mentioned as the principal article known to be thus returned; and it may be that the construction given to the law by the Comptroller, and by his predecessor in the office, in relation to this article, will be considered by the Legislature as erroneous. Should this be so, this point falls to the ground, as will also, any remarks which have been made upon it, or any suggestions which may be made as to what is considered the existing evil. If, however, the construction given to the law should be sustained, and it should be believed that books printed and published out of this State and within the United States, ought to be charged with duty, the contrary construction has become so universal, that, it is believed, a specific enactment, declaring that construction, ought to be made, as calculated in the most easy and certain manner to correct the present practice. The returns made to the Comptroller's office, go far to authorise the presumption, that frauds also in the return of furniture as free from duty, may exist; but as he is in the possession of no specific evidence to establish the suspicion, he will not venture either to assert the fact or to suggest remedies for the evil, if it is one, but will leave the matter to the Legislature, many of the members of which, possess a personal acquaintance with the whole subject of auction sales, as well as with this branch of it, not within his reach.

The practice of selling portions of large lots of property, as a mode of establishing a price for the disposition of the residue, at private sale, and without the charge of duty, constituting the fourth of the above enumerated abuses, is mentioned upon this occasion, because repeated complaints have been made of the existence of the evil, although the Comptroller has not received any specific proofs of the extent of the practice, or of the officers, if any, who are guilty of it. Upon one occasion, information was given of a particular instance of the kind, and an examination was immediately made into the facts. The result proved that the small lot only was sold at auction, and the return of the officer included no duties, ex-

cept upon that portion of the property actually struck off at the auction sale, but the explanation obtained from the auctioneer showed satisfactorily that the omission to include the duties, upon that portion of the property sold at private sale, in his return of duties was a clerical error in making the return, and not a design to defraud the revenue of those duties: that the entry of them was regularly made in his book, in which his account of duties was kept, and at the proper date, but that by some mistake the entry was omitted in copying the return. The duties were included in the subsequent return, and there the matter was permitted to rest. This is the only specific case which has been pointed out, but general complaints of the practice have been frequent. If it does really prevail, to any considerable extent, the effect upon the revenue must be of the most serious character; but, without farther and more precise information, the Comptroller is unable to form an opinion upon the magnitude of the evil. This practice, it is supposed, would be a violation of the 3d and 25th sections of the present law, and would incur the penalty imposed by the latter section; and it is also supposed that the omission to include goods so sold at private sale in the return of the officer, would be a violation of the 27th, 28th and 29th sections of the act, and would incur the penalty imposed by the 30th section. The latter penalty is to the people of the State, but the appropriation of the former is governed by the 40th section of the law, and goes to the support of the poor of the county. The same observations, therefore, which have been previously made, in relation to the recovery and appropriation of other penalties may be applicable to this; but, other than that change, no amendment of the existing law has suggested itself to the Comptroller, as applicable to this practice, or which would, with greater certainty, secure the revenue so far as penal provisions can accomplish that object. The difficulty is rather in obtaining the proof and enforcing the law, so far as this violation is concerned, than in the law itself.

But this difficulty "of enforcing the penal provisions of the present law," is made a distinct point, and therefore, should be remarked upon in this order. Little, however, remains to be said upon it, which has not been before incidentally repeated. The appropriations of most of the penalties is believed to be unfavorable to the efficient execution of the law. The support of the poor is a high charity, and one deserving all favor at the hands of the Legislature. But the experience of several years has shown that this disposition of the penalties imposed by the auction law adds nothing to

the charity, while it is very certain that few laws upon the statute book have been more frequently or openly violated. The farther provision, which is very general in this act, making most of the offences misdemeanors, and therefore punishable by indictment, instead of making the penalties matters of debt and recoverable as such, is believed to impede materially the execution of this law. The reasons for this opinion have been before given, and do not require repetition here. The discretion left to the courts as to the amounts of the respective penalties is also believed to be an objectionable feature in the law, and one which should be amended. It is a proposition so clear as almost to have become a maxim that the certainty, rather than the severity of punishment, is the preventive of crime, and no reason is discovered why a rule which is found the most effectual as a guard against acts, in themselves criminal, will not produce the same effects when applied to acts prohibited by the law. If this position be sound the penalties for the violations of this law should be fixed and certain, so that the precise consequences of a conviction may be calculated by the officer who permits himself to entertain a thought of taking the hazard. That being done, the mode of arriving at the punishment should be made as simple and as summary as may be consistent with the constitutional rights of the defendant, and the care of the prosecution should be entrusted to the officer whose responsibilities are connected with the interest to be served. A belief in these principles has led the Comptroller to the conclusion that the certainty of enforcing the penal provisions of this law will be promoted by fixing the penalties for each offence at certain amounts, where they are not now so fixed, by appropriating them to the public treasury, or to the fund to which the auction duties are now appropriated, by making them recoverable in actions of debt in the ordinary form, and by making it the duty of the Attorney-General, upon complaint made to him from the proper source, and upon the exhibition of such proofs as shall satisfy him that a recovery can be had, to sue for them. He would, therefore, suggest these as, in his opinion, amendments which ought to be made to the present auction law.

It may be urged that these alterations will render the punishments imposed upon violations of the law, as crimes prohibited, less severe and less solemn than they now are. This is admitted, but if the reasoning be correct, that cupidity is the stimulus to these violations, the arrangement proposed, while it will add to the certainty of the punishment prescribed, will set self-interest, arising from the

fear of the penalty, in array against the cupidity which urges to the violation under the prospect of profit. And it is believed to be a sound position, when interest induces an individual to violate the law, that the evil is remedied when it is made his interest to obey the law. If, then, the penalties imposed are sufficient in amount to overbalance the inducement to the violation, and if their recovery can be rendered certain, the remedy would seem to be complete.

Other provisions of this law, it is believed, may also be amended to promote the same object. The 21st section of the law makes it the duty of every auctioneer in a city to give at least two days previous notice, in one or more of the public newspapers printed in the city for which he shall be appointed, of every auction sale that shall be made by him, at any other place than his duly registered house or store. Most of the auctioneers connect themselves with partners in the different branches of business usually carried on in cities, and the advertisements are now made under the title which the firm thus constituted chooses to assume. The consequence is that the advertisement affords no certain indication of the person of the firm who holds the commission of auctioneer, nor indeed that any person so commissioned is a member of it. In short, many cases have been found where the name of the auctioneer does not even compose any part of the title of the firm; and where, therefore, a comparison of the list of the officers in commission with the advertisement would lead to the inference that the sales were making entirely without authority, and in open violation of the law. Still, upon inquiry, it will turn out that the firm is composed of individuals not at all indicated by the style or name assumed; and that among them is an auctioneer. This should not be so. The advertisement should exhibit clearly the officer upon whose authority and responsibility it is made, and to that end it is recommended so to amend this section of the present law as to require these advertisements to be signed at the bottom by the name of office of the auctioneer, and to be published with that signature only.

It will have been perceived that many of the violations complained of, if they exist and are practised to the extent supposed, involve a necessary want of caution or want of principle, in the subscription to the oath required by the 29th section of the law, to be made and attached to the quarterly returns. That such an inference is well founded there can not exist a doubt, but that want of caution and examination is its proper foundation, in most cases, is charitably ho-

ped. Indeed such is the belief of the Comptroller, and he founds that belief upon the fact that he has been told by an auctioneer of some experience, and several of whose returns were on file in this office, with the oath attached, that he had never, to his recollection, read the oath, and he really did not know what is contained. The want of caution, to this extent, may not be of very general application, but it is believed, from all the information connected with this subject, that this oath is copied into the returns, and taken and subscribed to, by many of these officers, as merely a necessary form connected with their returns, and with which they are bound by the law to comply, and not as a piece of testimony upon oath, immediately and directly applicable to their official transactions for the quarter covered by the return. No confidence is felt that this evil can be remedied by any amendment of the law; but it has suggested itself to the Comptroller that if this oath could be shortened, and still farther simplified, so as merely to state, in the most concise language, the important facts to be confirmed by it, there might be a greater probability that the substance, instead of the form, of the testimony would impress itself upon the mind of the person giving it. The law regulates all the duties of the auctioneer with great particularity and clearness, and shows him what should be contained in his quarterly return so plainly that if he reads the law he can hardly mistake. In any legislation to be had upon the subject, it must be presumed that the officer will read the enactments, and so far as his oath is concerned, he should be held reponsible under the pains and penalties of perjury, to do so. It is then suggested that the oath may simply state that the account is just and true; that it contains full entries of all sales, public or private, made by the officer for the quarter included in it; that it has been made in strict conformity with the provisions of the laws regulating auction sales; and that no sales, public or private, have been made by him or under his authority, in violation of the provisions of those laws. Let the requirements of the law, in relation to the account, remain as they are, and make false swearing in the oath punishable as perjury; and it is believed that some form of an oath, in substance coupling the account with the law, and expressly negating any violation, would be more likely, than the present form, to strike the mind and chain the attention of the person taking it. It might also induce a more careful attention to the requirements of the law itself, while it is not seen that the difficulties of a conviction for the false swearing, should any be discovered, would be greater than they are at pre-

sent, as the oath is now but a repetition of the requirements of the law.

It remains to examine the bill and amendments, referred with the resolution, and to see how far the provisions contained in the one, and proposed by the other, corroborate, or are in conflict with, the suggestions already made. The first section of the bill repeals so much of the fourth subdivision of section 1, title 1, chapter 5, of the first part of the Revised Statutes, as limits the number of auctioneers in the city of New-York. The opinion has been already expressed, that the number of those officers in that city, is fully equal to its business wants, and the reasons for that opinion have been assigned. If this conclusion be sound, the limitation would seem to be unimportant, and its continuance or repeal a matter of little moment, so far as the legitimate sales at auction are concerned. As, however, this section is connected with the subsequent provisions of the act, the propriety of passing it will principally depend upon the disposition which shall be made of them.

The second section provides that "the several auctioneers hereafter to be appointed, in and for the city of New-York, shall be arranged in three classes, and in the nominations, appointments and commissions of such auctioneers, the classes to which they belong shall be stated." This is an important provision, and proposes a material change in the existing law, and therefore deserves careful consideration. And as the fourth section of the bill is intimately connected with this one, and involves the details necessary to be considered in the discussion of the principle proposed, its consideration, in this connection, is rendered not only convenient, but necessary.

The substance of the enactment of the latter section, is the power of sale given to the respective classes of auctioneers, and is as follows: "Those of the first class to sell by public auction all property of every description, real and personal; those of the second class, to sell, by auction, real estate, ships and vessels, their tackle and apparel, groceries, crockery-ware, hardware, cutlery, books, prints and stationary, and no other property of any description; and those of the third class, to sell, by auction, second-hand furniture, books, prints, stationary, real property, ships and vessels, and their tackle and apparel, and no other property of any description." It will readily be perceived that this supposed necessity of classing these



officers, arises from another proposed change from the present auction system, which is to have the number of auctioneers in the city of New-York without limitation, and to charge specific sums for licences, or commissions, giving the authority to make these sales, though the order of the enactments in the bill has not yet disclosed that provision. The propriety, therefore, of that change, must, for the present, be assumed, and its discussion left to its appropriate place in the arrangement of the provisions.

The question then is, (the propriety of imposing a license fee upon the commissions of auctioneers in the city of New-York, being assumed,) does the necessity exist of making a classification of these officers, in order to charge the one class a different price for the franchise from that imposed upon the other? Such seems to have been the impression of the last House of Assembly, as the bill referred passed that body; but the reasons for that conclusion are not found in the report of the committee which presented the bill to the House, nor in any other of the papers referred. Another bill however, is found among those papers, which was presented to the Assembly of 1830, and which contains the same provisions upon this point. That bill too, it is discovered, was prepared and presented by a committee, some members of which must have possessed a personal acquaintance with the subject of auction sales in the city of New-York, far beyond that to which the Comptroller can lay claim, and in this view of it, the two bills are to him presumptive evidence of a conviction, prevailing among persons more competent than himself to form a correct opinion, that the provision is necessary. Still he is left to conjecture the reasons by which this conviction has been produced.

The burden of complaint, contained in the petitions referred, is the moral and pecuniary evil produced by "petty" or "retail" auctions, and the entire suppression, or an extensive mitigation, of this evil, is the prayer of those petitions. The justice or propriety of that prayer, is, in the mind of the Comptroller, in no degree doubtful, and yet the provision under consideration would seem to recognize, at least, in the city of New-York, the necessity of a continuance, perhaps to a limited extent, of what must there be considered "petty" or "retail" auctions. For from no other conclusion, can the classification proposed by the bill, be justified. The class No. 1, are authorised to make sales of "all property of every description, real and personal." This is all the authority which can be

conveyed, to make auction sales, whether great or small, whether wholesale or retail, or whether package or piece sales. Where, then, is the necessity of granting a limited authority to other classes when the authority to this class embraces all the power that can be granted? It can only arise from the supposition that the number of auctioneers who will take a commission in the first class, and pay the amount proposed to be charged for a license in that class, will not be sufficient to do the business which the public accommodation requires; or in other words, that there is business which the public interests require should be done by auctioneers, not sufficiently lucrative to authorize the officer to pay the fee for a commission of the first class. Hence the necessity, if such a necessity exist at all, of making provision for the appointment of officers, with limited authority, as to sales, and whose commissions can be procured for a less sum, by way of license, than the commissions of those whose authority is without limit. This necessity is recognized by both of the bills under consideration, and the acquaintance of the Comptroller with the business wants of that extensive city does not enable him to say that it has no existence.

That difficulties will be met with in carrying into operation the proposed system of classifying these officers, seems to him palpable. The first class will possess the authority to sell every description of property, and consequently their sales may include all articles which can be sold by the other classes. The second class will be empowered to sell specific descriptions of property, to wit: "real estate, ships and vessels, their tackle and apparel, groceries, crockery-ware, hardware, cutlery, books, prints and stationary." The third class will be commissioned to sell "second-hand furniture, books, prints, stationary, real property, ships and vessels, and their tackle and apparel." All these classes then can sell "real estate, ships and vessels, their tackle and apparel, books, prints and stationary;" two classes can sell "groceries, crockery-ware, hardware and cutlery," and two classes can sell "second-hand furniture." The difficulty to be most apprehended, therefore, plainly is that of preserving the classification unbroken, and restraining the officers of each class to the sale of such property only, as they are authorised to sell. In relation to the articles not enumerated above, and which the first class only may sell, there may be less difficulty; but with the articles enumerated, most of which all three classes are empowered to sell, and none of which are confined exclusively to one class, it is not seen how conflicts of authority are to be avoided, or how frauds are to

be prevented. The articles enumerated within the proposed powers of the first and second class, are so nearly the same, that a mere view of the stock on sale, might give no indication of the grade of the officer, while the fact that the powers of the first class embrace every article, would only tend to increase the difficulty, by rendering it impossible to determine, from an examination of the property offered at a sale, or even from a correct printed schedule of it, to what class the auctioneer belonged, unless the articles should happen to be those confined to the first class only. How then, will frauds be prevented, if the integrity of the officer should not prove a sufficient guaranty against them? That under the present system, that guaranty has in some instances failed, is a lamentable truth, and that it will prove a more safe reliance under the proposed system of classification, is not to be expected. The inducement to frauds upon the revenue is not to be removed. The powers of the officer are to depend upon the price paid for his license, and if the person paying the less price can avail himself of the greater power, his profits are proportionably increased, without the proportionable expence, to say nothing of the advantage he would have, were the business to become matter of competition, between the officers of the different classes. No mode of detecting the frauds which might be thus practised, carrying with it a reasonable certainty of success, has suggested itself to the mind of the Comptroller, and the danger of the frauds, and the facility of their introduction, without some ascertained plan for their prevention, seem to him to be material objections to the adoption of the provisions. For it should not be forgotten, that the officer whose want of principle would permit him to practise frauds, and whose ingenuity should enable him to do so successfully, would be certain not to convict himself of them by his return. If he should sell property liable to duty, which his powers as an auctioneer did not authorize him to sell, his personal indemnity would compel him to omit such property in his returns.—The State, therefore, would not only lose the trifling additional sum which he should have paid for his license to sell, but the whole of the duties upon such property as he should sell, without authority.

If, however, from the considerations before mentioned, or from any other, a classification of the auctioneers should be considered necessary, the inquiry is respectfully made, whether the classes may not be so arranged, and the powers of each so distributed that each

may have its distinct descriptions of property assigned, and that no concurrent power shall be conferred upon any two classes? The Comptroller is sorry to say that his information upon this point does not enable him to answer the inquiry; but those members of the Legislature immediately acquainted with auction sales, and the business of auctioneers in the city of New-York, will be able to advise that body upon this point; as they will also be able to estimate properly the importance of the difficulties apprehended in the adoption of the classification proposed by the bill referred.

The third section of the bill introduces the principle of commissioning auctioneers upon their application, without a limitation of number, and upon the payment into the treasury of the State of a stipulated sum, as the consideration for the franchise. This proposition, though new with us, is not new as applied to the subject, as some of the States, and particularly Pennsylvania, have long since introduced it, as it is believed, with entire success, and with a material addition to the revenue derived from the subject of auction sales. To its introduction in this State, whether confined to the city of New-York or made entirely general, no objection is seen, separate from the proposed classification of the officers before commented upon. The bill referred proposes to charge to the auctioneers of the first class a license fee of \$1,000; those of the second class of \$500; and those of the third class \$250; but is confined in this, as in all other of its provisions, to the city of New-York. Upon the propriety of these sums, as compared with greater or less amounts for any or all of the proposed classes, and upon the proportion established between the different classes, the Comptroller has little information; and, therefore, an opinion from him, upon either of these points, would deserve little consideration. His impression however, is that, as applicable to the city of New-York, the sums mentioned in the bill are sufficiently low; though, if a similar provision were to be extended to other cities, or to be made entirely general, a very different rate would be required. The opinion has not only been expressed but repeated, that the present number of auctioneers authorised to be annually appointed for New-York is fully equal to the business wants of the city. It is not, therefore, anticipated that this change of the law would increase the number of these officers, and certainly not for any considerable period; but it is believed that the sums paid for the licenses would be nearly, if not entirely, so much added to the revenue from auctions. This would be a public benefit, while the present opinion, somewhat

prevalent in that city, that the auctioneers in commission hold a monopoly, invidious in its character, if not repugnant to those principles of republican equality which ought, as far as public policy and public safety will permit, to characterize all our laws, will be met and fully answered. The taking a commission as auctioneer or not, if this system be adopted, will become a matter purely of pecuniary interest and calculation, and the officer in commission will renew or resign his authority as his interest shall dictate, and not as his pride of feeling at the moment, or the influence of his friends with the appointing power, may stimulate him to act. If the price of a license be kept sufficiently high, the number of commissions will soon be regulated by the fair demands of legitimate business; and the whole matter will become, like other callings, adopted at the choice or pleasure of the individual, subject to the rules of a prudent economy, and of private interest. In this way also the petitioners whose petitions are referred evidently expect, and it is believed not without foundation, to be relieved from most of the evils of petty and retail auctions. At present the commission of an auctioneer is obtained without charge, and if the officer confines himself to the sale of those articles which are free from duty, his commissions and profits are his own, while an entire want of customers incurs no loss. The effort, therefore, to obtain a commission may be a mere experiment, and if successful, a miserable business, affording little profit to the officer and less to the pockets or morals of his buyers, may be established without capital and continued without the ordinary hazards; and sometimes with the prospect of important gain. If, however, a considerable sum were to be advanced, as a condition of obtaining the authority to sell, the petitioners urge that commissions would not be taken, until the reasonable prospect of a legitimate and respectable business should be secured; that the proceeds of that description of sales from which the most serious evils are experienced would not authorise the payment for a license; that the commissions would fall into more respectable hands; that the gross frauds now practised upon the purchasers at these petty sales would disappear; the injury to the mechanics and laboring classes, from the forced sales of inferior articles, be greatly diminished; and that relief be substantially granted which they so earnestly seek.

It may be proper here to remark, that the bill referred does not propose to make any alteration in the mode at present prescribed of appointing the auctioneers, and it is a just subject of inquiry,

whether, in case the system of licensing these officers at a fixed price shall be adopted, some amendments of the law regulating their appointments should not be made, so that an applicant, finding it for his interest to do so, may obtain a commission, or an authority to sell, at any period when he shall choose, and shall bring himself within the provisions which entitle him to the privilege.

The fifth section of the act is penal, and necessarily dependant upon the adoption or rejection of those which precede it. As it refers, however, to one of the penalties imposed by the existing law, and applies that penalty to the violations of the provisions of this bill, it is subject to the same objections in relation to the uncertainty of the punishment, the appropriation of the penalty, and the mode of its recovery, which have already been made against most of the penal provisions of the present law.

The sixth section directs the appropriation of the money to be received for licenses, to the Canal fund, which disposition of these moneys is believed to be entirely proper, if not imperatively required by the constitution; but the mode of the appropriation would be beneficially changed, by directing that it should be made in the same manner with that of other moneys received into the treasury belonging to the Canal fund.

The seventh section limits the time when the bill, if passed into a law, was to take effect, and is of course now unimportant.

The eighth section imposes a duty of one-eighth of one per cent upon stocks sold at auction; and the ninth section limits the compensation of the auctioneer who sells the stocks, to the same amount, unless, by a previous agreement in writing, a different rate of compensation shall have been fixed upon. No objection is known to exist against the provisions of either of these sections, but on the contrary, they would seem to the Comptroller to be entirely proper.

This closes the examination of the bill referred, and the amendments offered thereto, in committee of the whole of the Senate, came next under consideration. It does not appear from the papers whether the amendments were designed as a substitute for the engrossed bill from the Assembly, or as additions to it. The numbering of the sections would seem to indicate the former intention, while some of the provisions of the amendments appear to recognize a system of licensing auctioneers, and thus to contemplate the

adoption of that feature of the bill. It is, however, unimportant for the present purpose, in which way the amendments were proposed. The principles they contain are altogether different from those adopted by the bill, and still do not necessarily conflict with them. The bill contains regulations for the classification and licensing of auctioneers, and for the duties to be charged upon certain sales at auction, while the amendments relate solely to the government of these officers, however licensed or appointed, and to the prevention and punishment of frauds practised at their sales.

The adoption or rejection of the one, therefore, does not necessarily affect the other, and the action upon each must be independent, whether the latter be proposed as a substitute for the former, or as an addition to it.

The first section of the amendment proposes the appointment by the Governor and Senate, in the manner now established for the appointment of auctioneers, of a superintendent of auctions for the city and county of New-York, to hold his office for two years, unless sooner removed by the Governor. The third section makes it the duty of this superintendent "to cause the laws regulating sales at auction to be enforced against all persons selling at auction in the city of New-York without license, and against all persons violating the provisions of said law;" and to "observe such orders and directions, from the Comptroller of the State, as he may give in relation to the duties of auctioneers."

This again is the introduction of a material change in the present law, but it is not a change new to the Legislature or to this office. The necessity and propriety of the appointment of such an officer has been considerably discussed for several years, and a variety of opinions have been expressed upon both sides of the question. A trial of the experiment, and the experience derived from such a trial, can alone determine which set of opinions is correct. The only point now to be considered is, whether the promise of utility from the efforts of such an officer justifies the trial, and whether the saving to the revenue would be equal to the expense of a reasonable salary for the services to be performed. This opens a broad field for discussion and conjecture, and from which, however extensively examined, very little certainty can be derived. It will, however, be the duty of the Comptroller to suggest such acts as it appears to him the proposed officer can perform advantageously to the revenue,

and to sales at auction, and such objections as have occurred to his mind, against his ability perfectly to detect all the frauds which may be practised; and then to leave the determination of the propriety or expediency of the appointment to the Legislature.

A superintendent of auctions in the city of New-York can,

1st. Examine the clerk's office, and find what persons have taken licenses or commissions, as auctioneers:

2d. He can learn from this office whether all, or which of those persons, have executed the necessary bonds and paid the license money, if any should be required:

3d. He can examine the register of the auction houses and stores, and learn the house or store designated by each auctioneer as his place for holding sales:

4th. He can then, by frequent and careful visitations, ascertain if sales are held at houses or stores not registered:

5th. He can also learn by whom such sales, if any, are made, and what articles and descriptions of property are so sold:

6th. He can examine the advertisements for sales at auction, and see that they are made in conformity to the law, and that the property advertised to be sold is such as the law authorises to be sold at the place designated in the advertisement:

7th. He can examine the returns of the auctioneers, and, being authorised to do so, can put the officer upon his oath, and inquire particularly as to any facts connected with the return, the places of sale of the articles mentioned in it, the place of their manufacture, and whether or not they are properly dutiable, or exempt from duty by the law:

8th. He can endorse his approval upon the returns with which he is thus satisfied, and refuse to make the endorsement upon those which he believes to be fraudulent or untrue:

9th. He can visit the auction rooms and observe the manner in which the sales are conducted, and note, as far as they meet his observation, the frauds practised, either upon the revenue or the bidders at those sales.

10th. He can, at his pleasure, if so authorised, examine the books of the auctioneers, and their accounts of sales, public or private, of duties charged and paid, and of their fees and commissions, and can test the correctness of the entries by an examination, upon oath, of the officer, his partners and clerks.



11th. He can report to the Attorney-General, all frauds against, and violations of the law, which he may discover, and furnish him with the facts and circumstances, the names of the witnesses, and all other information necessary to a recovery of the penalties.

These are duties which it is believed a superintendent of auctions may perform, and which would probably go far to prevent many of the practices now complained of. But to accomplish this object most effectually, it would seem to the Comptroller, that the duties of this officer should, as far as that may be practicable, be specifically pointed out ; that all returns of the auctioneers in New-York should be made to him, instead of being sworn to before the mayor of the city, as now required ; that he should be authorized to administer the oaths required to be attached to the return, and further, to make such oral examination of the officer, his partners and clerks, as he might think necessary, to establish the correctness or incorrectness of the facts in detail stated in the return ; that he should also be authorized, whenever he should choose to do so, to examine the books of the auctioneers, and their accounts of sales, public and private, of duties and commissions, and to make inquiries upon oath of the officer, his partners and clerks, as to the correctness of their accounts, and the entries therein ; and that no return of an auctioneer from New-York should be received at this office, without an endorsement in writing thereon, signed by the superintendent, certifying his belief in the correctness of the return. Provisions of this description, by those better acquainted than the Comptroller, with the business of an auctioneer, may be supposed to be unnecessarily and injuriously severe, and if they are so, they certainly should not be adopted ; but if they will not put into the hands of the superintendent a dangerous power, when discreetly exercised, over the fair business of these officers, their adoption would certainly add much to his ability to prevent frauds, and to secure true and full returns of sales.

The objection, which has been principally urged against the utility of the appointment of a superintendent of auctions in New-York, is, that he would soon be known to all the sellers at the auction sales ; that with the devotion of his whole time to the duties, he could be present at but a very small portion of the sales, and but a very short time at any one sale ; that his presence would be watched and guarded against, and that his visits to the auction rooms would only compel those willing to practise frauds to a greater degree of vigi-

lance during the periods when he should be present, by which they would acquire his confidence, and be thus able to proceed with their violations the more openly and successfully in his absence. This opinion induced the late Comptroller to believe that the permanent appointment of such an officer would give less promise of the prevention of frauds, than the temporary appointment, by some proper officer of the government, as occasion should require, of a mere agent, not known or avowed, and who would be able to visit the places of sale without exciting suspicion, and consequently, from his own observation, to determine what abuses and violations of the law were practised, at what rooms or places of sale, and by or under the authority of what officer, if any ; while the latter course, it was supposed, would be attended with much less expense than the former. To this opinion, the Comptroller has been himself inclined, but he has found that many persons, possessing extensive opportunities for acquaintance with this subject, differ with him upon this point ; and the suggestion is therefore made, that the Legislature may make the election, in case they should conclude to adopt either course, from the superior information they will doubtless receive from members of their own body.

The appointment of a superintendent of auctions will not necessarily be affected by any action upon the engrossed bill referred, but the Comptroller considers it proper to remark, that if the classification of the auctioneers in New-York, proposed by that bill, be adopted, and if the powers of sale of each class are established as therein specified, it will, in his judgment, furnish a strong additional reason for the appointment of such an officer. He has already suggested his apprehension of the difficulties which will be met with in restraining the different classes of auctioneers within their specified powers ; and his impressions are, should those provisions of that bill be passed into a law, that the vigilance of a faithful and active superintendent would afford the greatest security upon this point.

It need not be said, that should such an office be created, the qualifications of the person filling it, would go far to decide the utility or inutility of the expense. The duties would be arduous and unpleasant. The officer, if his duties were faithfully discharged, would soon be considered a spy and informer by the auctioneers, and he would have to pursue his course uninfluenced by the odium which interested individuals might bring upon him, or the office would be

worse than useless. But in determining upon the propriety of providing for the appointment, it should, of course, be assumed that the office, if created, will be properly filled.

The second section of the amendments, makes it the duty of the Comptroller "to prescribe such rules and regulations in relation to sales at auction, as he shall deem necessary and proper, to prevent frauds in such sales, and to protect the revenue arising therefrom." It does not become the Comptroller to make objections against the adoption of this provision, and still it is due to the subject, that he should state to the Senate, that the constant and daily duties of his office, leave him little leisure, at any season of the year, to examine into, and inquire after subjects not immediately and necessarily connected with those duties; that the means possessed by him to acquire correct information as to the practices prevailing among the auctioneers in the city of New-York, are not to be depended upon, if exercised without a personal visitation, or the sending of an agent, to inspect the sales, and the places and manner of conducting them, and that therefore, this provision would be a very uncertain dependence against frauds and violations of the law, in any case, and would be especially so, if adopted by itself, and with reference to the law as it now is. Connected, however, with the other provisions of the amendments proposed, and especially, with that providing for the appointment of a superintendent, it may be a safe and wholesome provision. The returns are made to this office. The complaints of violations of the law, and of abuses by the auctioneers, or those selling altogether without authority, are habitually sent here. If, then, an officer be appointed, whose duty it shall be to give correct information in relation to these complaints, and to obviate all difficulties arising upon the face of the returns, this office may be performed by the Comptroller, with profit to the revenue, and in furtherance of the usefulness of the superintendent. But without such aid to acquire the necessary information, the duty would be assigned with little prospect of benefit to the revenue, or security to the public.

Should these provisions, however, both be adopted, it may be supposed that many of the amendments, before-suggested, might be left to the regulations to be dictated by the Comptroller. To such an opinion, it is answered, that the provisions of a law, passed by the Legislature, with all the solemnities which attend their enactments, have a force and influence with those upon whom they are to operate, which cannot be given to the regulations and instructions

of an individual. Whenever, therefore, the practicability of the provision is without question, it is, in the opinion of the Comptroller, always more wise that it should have the authority of a law, than that it should be left to the discretion of any administrator of the law, though, when the proposed rule or provision should be experimental merely, it might be more safely left to a discretionary agent.

The third section of the amendment relates to the duties of the superintendent, but as remarks have heretofore been fully made upon those duties, nothing remains to be added in this place.

The fourth section proposes to regulate the salary to be paid to the superintendent, and the only remark called for from the Comptroller upon that subject, is, that the salary, whatever it may be, should be made chargeable to the canal fund. The proposition is to establish the office to protect and improve the revenue to be derived from auction sales, which revenue, by the constitution, is appropriated to that fund, and therefore, this charge, designed solely to be incurred for the benefit of that revenue, should be made chargeable to the fund for the benefit of which the expenditure is to be made. Should the provisions of the bill be adopted, establishing a license upon the commissions of auctioneers, the money thus derived is appropriated to the canal fund, and no reason is perceived why this should be done, and the expenses to be incurred to protect the receipts from these sources, be made chargeable to another fund. This section should, therefore, be so amended as to give this direction.

The fifth section relates to advertisements for sales at auction, by persons other than regularly authorised auctioneers, and imposes a penalty of fifty dollars upon the insertion of such an advertisement in any of the public newspapers in the city of New-York. This provision is undoubtedly necessary, as the penalty in the existing law is against the sale by an unauthorised person, and not against the advertising, but the enactment should be placed in connection with amendments to the present law, recommended in relation to these advertisements by auctioneers.

The sixth section imposes an additional penalty of fifty dollars to that imposed by the existing law, for each violation or neglect, and the seventh section makes these additional penalties recoverable in

the name of the people of the State, before the marine court, or any assistant justices' court, in the city of New-York, and when recovered, it makes it the duty of the superintendent of auctions, to pay over the money to the trustees of the Deaf and Dumb Institution, first deducting the costs of the recovery, and to make annually, a return to the Comptroller of the penalties so recovered and disposed of. The propriety of these provisions are considered altogether questionable, both in principle and policy. If the present law remains unaltered, the effect will be, that the auctioneer is liable to two separate prosecutions, before two separate tribunals, for the same offence. He may be indicted and convicted for a misdemeanor, and fined by the court having jurisdiction of his offence, according to the penalty imposed by the statute, or in some cases imprisoned, as well as fined, and when he is discharged from that punishment, he may be taken before the marine or assistant justices' court, and again tried and convicted, and punished by the imposition of this added penalty for the same offence. The order of the prosecutions may be reversed, but the effect of the double trials and double punishment will be the same. A still greater absurdity may also follow the different enactments. The accused may satisfactorily establish his innocence before the one tribunal, and receive an honorable acquittal, and before the other, even upon the same testimony, he may be condemned and punished. The same difficulties would equally exist, if the mode of recovery of the penalties imposed by the present auction law, should be changed, according to the recommendations of this report. Such legislation, it is believed, would be against sound policy, if it is not a virtual infringement upon the rights secured to the citizen by the constitution ; and the adoption of these sections in their present shape, is not, therefore, believed to be advisable. If it is considered important to raise, in this way, the money proposed, and for the worthy object to which these added penalties are to be appropriated, that purpose may be accomplished by making it the duty of the courts before which auctioneers may be tried, in cases of conviction, to add to the sentence now prescribed, the further penalty of fifty dollars, to be paid, when collected, as directed in the seventh section of the amendments.— This will avoid the inconsistency of two separate trials and conviction for the same offence, and free the provisions from objections of a constitutional character. Still the reasoning which the Comptroller has adopted in relation to the penalties imposed by the present law, as appropriated to a public charity, will be applicable to this proposition, and if his conclusions are sound, with a reference to

the existing penalties, they will be equally so with reference to those proposed to be added for a similar object, and will therefore show, that these sections ought not to be adopted.

This closes the view which the Comptroller proposes to take of the amendments offered in committee of the whole of the Senate, to the bill referred.

Two remonstrances are found among the papers referred, which deserve notice. The one is from the auctioneers and several citizens of the village of Rochester, in the county of Monroe, denying the immoral and injurious tendency of retail auctions in that village, and praying that no law may be passed prohibiting them. The other is from a large number of the auctioneers of the city of New-York, questioning the constitutional right of the Legislature to impose a license fee upon the commission of an auctioneer in that city, which is not general and applicable to the whole State, and urging that such a law will be calculated to throw those offices into the hands of the wealthy ; to put many of them, indirectly, and through the use of their clerks, who are citizens, into the power of foreigners, who are importing goods for the auction market, and to exclude the industrious and worthy, who are unable to purchase commissions, from a participation in the emoluments of these desirable offices. These remonstrances are mentioned in this place, that the statements contained in them may not escape the attention of the Legislature.

The Comptroller cannot believe that any constitutional difficulty exists against adopting the proposition for licensing these officers, as it does not seem to him to be a case coming at all within the constitutional provision to which the remonstrants allude. As to the other statements contained in both the communications, they are of a character which address themselves peculiarly to the sound discretion and paternal care of the Legislature, over the rights and interests of the citizen, and are not considered as calling for any remarks from the Comptroller.

Before closing this report, it is considered to be a duty to bring to the notice of the Legislature a description of frauds practised upon the public by means of auction sales in the city of New-York, which is not alluded to in any of the papers referred. The complaint regards the sale of wild and unimproved lands. The extent of the frauds which have been in this way committed, the Comptroller has no means of ascertaining, but that the most gross and daring decep-

tions have been practised to some extent, has been fully shown to him. A tract of land in Hamilton county, consisting of from seven to eight thousand acres, sold at the general sale for taxes, in 1826, for the trifling sum of \$129.17, and not redeemed, has been retailed in New-York, and, as is said, mostly at auction, at prices, many times, beyond any probable value of the land. The purchasers have been usually foreigners, and persons not resident in the State, and wholly unacquainted with the character of the country where these lands are situate; and the Comptroller has been informed by respectable citizens of New-York, that maps were exhibited at these sales, executed in a manner calculated to please the eye, and purporting to contain accurate allotments of the lands, with mill sites, timber lots, marble quarries, and various other indications of value, marked upon the various lots, while the annual returns of the tract of land to this office, by the assessors, furnishes very conclusive proof that it has never been surveyed and allotted at all. Upon one occasion, a printed bill, advertising these lands, was presented at this office, with a view to make inquiries respecting the title, which bill was strongly corroborative of the reports in relation to the maps and other deceptions practised at these sales. This advertisement assumed to describe the lands with great particularity; to give the quality of the soil, the character of the timber, and the great advantages of the location upon the head waters of the Hudson river, in a manner well calculated to mislead and deceive strangers. The villages of Glen's-Falls, Fort-Edward and Sandy-Hill, were put forth in large capitals, as accessible and convenient and profitable market towns, located upon the State canals, and wanting the productions of these lands. Several deeds of lots in this tract of land have also been, upon different occasions, presented at this office, showing a consideration paid, of from forty to one hundred and fifty cents per acre, for the lots described in them, containing very precise and detailed descriptions of the lots, with the courses and distances, and bounds of the respective lines and corners, and referring to a map and survey of the lands recited in the deeds, to be on file in the "register's office of the county of Hamilton." Such is the boldness with which frauds of this description have been practised upon the credulous and the stranger, when every citizen of this State, of sufficient intelligence to have exercised the duties of an auctioneer in the city of New-York, or elsewhere, or to draw a deed, must know that Hamilton has never been organized as a county; that no office for public records has ever been established in it, and that no such

office for records, as that of a "register's office," exists in any country county in the State.

The Comptroller is aware that these frauds have no connection with the revenue from auction sales, as lands sold at auction are not charged with duty ; but as the most of the papers referred, relate to frauds practised through the instrumentality of these sales, not upon the auction revenues, but upon the purchasers ; as a part of this report has been devoted to an enumeration of those frauds and deceptions, as shown by the petitioners ; and as this subject, together with the protection of the revenue, will undoubtedly occupy the attention of the Legislature, it has not been considered improper, or without the scope of the reference, to communicate the facts and circumstances which had come to the knowledge of the Comptroller, in relation to an evil not alluded to in the petitions, but not the less requiring correction from the wisdom of the Legislature.

The importance, so far as the revenue is concerned, of the business of the respective auctioneers in the city of New-York, as well as in the State generally, will be found in the statement of the auction duties paid into the treasury for each year, annually communicated with the report, from this office, of the state of the finances.

SILAS WRIGHT, Jr.,  
Comptroller.

*Dated Albany, 11th February, 1832.*





**IN SENATE,**

**February 13, 1832.**

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**OPINION**

**Of the Attorney-General in relation to grants of land under water ; submitted in obedience to a resolution of the Senate.**

The Attorney-General, in obedience to the resolution of the Senate, requiring “ an opinion on the following questions, relative to grants of land which have heretofore, or may hereafter be given by the Commissioners of the Land-Office, under the act authorizing them to grant land under water around the county of Richmond :

“ 1st. What rights and privileges are given to the holders of those grants ? and

“ 2nd. How far the public rights and privileges heretofore enjoyed for fishing and other purposes are affected by grants so given ?”

**RESPECTFULLY SUBMITS THE FOLLOWING OPINION :**

By the Rev. Stat. p. 208, sec. 67, it is enacted that “the Commissioners of the Land-Office shall have power to grant so much of the lands under the waters of navigable rivers or lakes, as they shall deem necessary to promote the commerce of this State.” And by section 69, it is declared that the “powers of the Commissioners shall also extend to the lands under water, adjacent to, and surrounding Staten Island.” The first statute upon this subject after the revolution, was passed May 5, 1786, and was substantially like the present law, with the exception that navigable lakes and the waters surrounding Staten Island were not included. The power of the Commissioners was first extended to those waters by the act of 1815.— The following references will show the progress of legislation on this subject. Laws of New-York, 1 J. and V. 332, sec. 18, act of 1786. 1 Gr. 284, same act. 1 R. L. 1801, p. 299, sec. 11. 5



**No. 46.**

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**IN SENATE,**

**February 13, 1832.**

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**REPORT**

**Of the committee on the division of counties and towns, on the bill to divide the town of Deerfield, in the county of Oneida.**

The committee on the division of counties and towns, to whom was referred the engrossed bill from the Assembly, entitled "An act to divide the town of Deerfield in the county of Oneida," ask leave to

**REPORT :**

The town of Deerfield is situate opposite the city of Utica, and the villages of Whitesboro' and Oriskany. It forms an L in shape; and the petitioners seek to cut off the base of the L, west along the Mohawk river, and form it into a new town by the name of *Marcy*.

The population of the present town of Deerfield is 4182. If divided in the manner petitioned for, and specified by the bill, it will leave about 2300 inhabitants in the old town, and about 1800 in the new.

The proposed division will leave the town of Deerfield about  $3\frac{1}{2}$  miles wide from east to west, and about  $10\frac{1}{2}$  miles in length north and south; and the new town will be about 6 miles east and west on the river, and 5 miles north and south.

The town-meetings have always heretofore been held at the corners, about a mile from Utica, on the southeast extremity of the town, and within two miles of the eastern line of the county. To those inhabitants residing at and near the corners, and to the settlement north, this place (as it is in the direct route to market) cannot be considered as ineligible; but to those who reside in the western part of the town, and whose usual route is to cross the Mohawk ei-

[S. No. 46.]

ther at Oriskany or Whitesborough, and whose immediate trade lies with those places principally, it is quite inconvenient to attend their public meetings, or to public business at the corners.

This bill passed the Assembly, grounded on petitions of 1829 and 1830, containing about 300 signers, which were then before the Legislature on a like application, but which did not succeed. And the remonstrants before the Senate, state that they were not apprised that the application would be renewed this year, as no new petitions had been got up, and they supposed the notice not sufficient, or that the power and force thereof was spent last year, until they saw in the public papers that the bill had passed the Assembly. They then came before the committee of the Senate, and both parties have been heard on the subject.

The last notice of application is dated February 9th, 1830, and was put up then, and read at the town-meetings in 1830 and 1831; was signed by eight freeholders of said town, and is not denied to be regular, except that it extends to two years, as follows:—"Notice is hereby given that application will be made, &c. to the *next Legislature*; and in case the said application should not be granted by the next Legislature, an application will be made to the *next ensuing Legislature*, to divide, &c. Dated February 9th, 1830."

The affidavit accompanying the above notice, was sworn to on the 31st December 1830, and was used last winter; and it does not appear that any new notice was put up last year, although a vote of the town was, at the last town-meeting, taken on the subject.

The statute relative to notices, requires that a notice in writing of the intended application, subscribed, &c. shall be affixed on the outer door of the house where the next town-meeting is to be held, at least ten days previous to the town-meeting; and a copy thereof shall be read at the town-meeting; and a sworn survey and map of the new town shall accompany the petition, be laid before the Legislature, and filed with the Surveyor-General, before it shall be acted on. No verified map or survey has been exhibited to your committee, nor filed; and they refer the sufficiency of the notice to the consideration of the Senate. They will, however, indulge in this passing remark, that if the notice can be extended to two years, they see no reason why it may not be equally legal to extend it to ten in succession; and thus the benefit intended by the statute, be altogether eluded.

Your committee take this occasion further to remark, that the want of proper maps of the several new towns lately erected in this State, has been a subject of great complaint with the Surveyor-General and others ; and that much of it may be attributed to the fact, that the committees of the Legislature have relaxed the law on that subject ; a law which we think extremely salutary, and indeed necessary. If the Legislature should uniformly require a strict performance of that part of the statute, as a preliminary step before the merits of the application should be inquired into at all, it would certainly not operate as a hardship to the applicants, because the map would benefit themselves in common with the public, would obviate the evil so justly complained of, and would eventually save to the State large sums of money which will otherwise, from necessity, at some future day, be expended in surveys.

Since this bill has been before the Senate, a petition for the division of the town has been presented, dated this winter, containing 182 names, of whom about 100 are on the tax list ; and a remonstrance of about 120 names, of whom about the same number are also on the tax list, all residing within the proposed new town.

The petitioners are those who reside west of the centre of the town, and the remonstrants those who reside at the east part, and near the proposed east line of the new town. The petitioners are incommoded considerably in attending town and other public meetings at the corners, a distance of from 4 to 8 miles ; which to the remonstrants is a matter of small moment, whether they go 2 or 3 miles east or west to attend their meetings. They therefore prefer it to remain as it is.

It is also proper to state, that at the last town-meeting, a vote was taken on this subject ; when 450 were against, and 45 were in favor of the division. But inasmuch as the mass of inhabitants of old towns are always against a division, and the residents of the extreme west part of the town were probably many of them absent in consequence of the distance, the vote ought not to be considered as at all decisive of the views and wishes of those whose interests in the case are paramount—the *inhabitants of the new town*.

The expenses to the old town will not be materially enhanced by the division. The county poor-house supports the paupers. There are but two bridges left in the old, when there are five in the new town. And inasmuch as after the division, the town of Deerfield

will contain a population of 2300, and a respectable size as to territory, we cannot conceive their opposition ought to have much weight.

The proposed new town will have about 300 voters : Of these, a large majority, nearly two to one, are in favor of the division ; and of the remainder it may be said, if the town-meetings are held in the centre, where they certainly ought to be, that they will be as well accommodated as at present, and at the fall elections, better. The active opponents of the new town are from the old part of Deerfield, from about the corners, where the town-meetings have been held, and where the people are interested in having as many to attend these meetings as possible.

Your committee, from a view of all the facts of the case which appear on the papers, and from the statements made by gentlemen who have argued the question before them, have come to the conclusion to recommend the passage of the bill, (with an amendment as to the place where the first town-meeting shall be held, bringing it to the centre of the new town,) if the Senate are satisfied that the notice in this case is sufficiently regular, and that it is proper or even expedient to waive the production and filing of the verified map prescribed in the Revised Statutes, and thereby virtually to nullify the statute.

WILLIAM I. DODGE, *Ch'n.*

**No. 47.**

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**IN SENATE,**

**February 15, 1832.**

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**REPORT**

**Of the committee on claims, on the petition of John C. McLean.**

The committee on claims, to whom was referred the petition of John C. McLean, respectfully report the following statement of facts:

In the year 1824 the petitioner purchased of his father, Thomas McLean, Lot No. 74 in the Peru Bay Tract, and agreed to pay for said lot four hundred dollars, over and above a balance of about one hundred and fifty-seven dollars then due to the State for principal and interest.

In the spring following, this lot, with others in the same tract, was advertised by the Surveyor-General, to be sold for non-payment of interest. The sale of these lots commenced on the 16th of June, 1825, sometime in the forenoon of which day, as the petitioner states, and your committee believe, the petitioner paid to the Treasurer thirty-five dollars for the arrears of interest, and two dollars for costs.

Unfortunately for all parties, this payment was not entered, as it should have been, in the Comptroller's books; in consequence of which omission, the books, on comparing them with the list of lots to be sold the next day, did not show that this lot had been redeemed.

The petitioner attended the sale during the first day, and finding his lot was not reached, concluded all was safe, and left the city.

The lot was sold for \$157.29, the balance of principal, interest and cost, which appeared to be chargeable thereon, to George D.



Simpson ; and on a subsequent examination of the facts and circumstances in the case, by the Commissioners of the Land-Office, they did not feel justified in denying Mr. Simpson's claim to the patent, on his paying the amount of the bid.

Mr. McLean afterwards petitioned the Legislature for relief ; and on the 19th March, 1830, an act passed, providing that the Treasurer should pay him such sum as the Commissioners should ascertain and certify to have been the actual value of the lot on the 16th of June, 1825, deducting therefrom the sum due the State, in full of all claims of the said McLean, &c.

The second section of the act, which it is believed was added by way of amendment, after it had passed the Senate, provides that such sum shall not exceed the amount actually paid by the said McLean on account of said lot, with the interest, at the rate of six per cent.

Difficulties arose in the construction of this act, and the Commissioners of the Land-Office, declining to comply with what the petitioner contended was the proper construction, he was compelled, as he states, in pursuance of the rights which he believed the Legislature intended to secure to him, to apply for a mandamus, to the supreme court. Of this application he gave the Commissioners notice, some time in January, 1831—on the 29th of which month, the Commissioners made a communication on this subject to the Assembly, to which document, No. 72, your committee beg leave to refer. The communication here referred to, does not appear to have produced any legislative interference ; and the petitioner followed the only course, as he supposed, which was open for him.

The supreme court, it would appear, took the view of the act of March, 1830, which had been contended for by the petitioner, and granted a mandamus.

Under this mandamus, an appraisal of the lot has been directed by the Commissioners, to ascertain its value on the 16th of June, 1825 ; and after deducting from this appraised value the sum due the State on said 16th of June, the Commissioners have certified that there was due the said John C. McLean, the sum of \$145.31, which sum has been paid to him.

Mr. McLean contends that in this transaction he has suffered severely, and without any fault of his own, in several particulars :

1st. In the expense and trouble of procuring the act of 1830, the necessity of which originated in one of the government officers, and not with the petitioner :

2d. In the delays and expenses encountered by him, in causing an execution of the law ; the costs of which he paid to procure the mandamus, being \$47.55, according to a bill furnished to your committee :

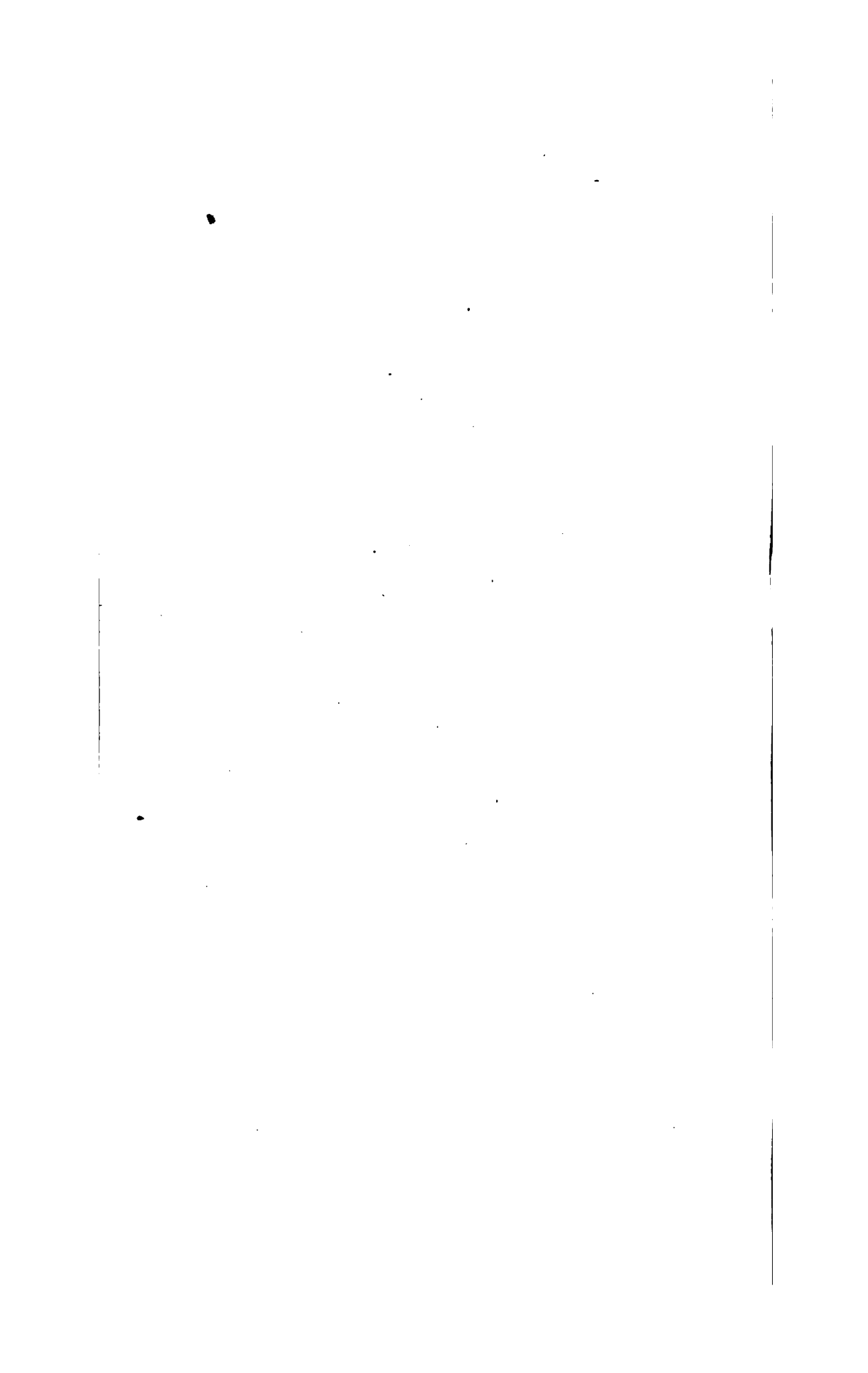
3d. In receiving no notice of the time when, or the persons by whom the appraisal of the lot was to be made :

4th. In the appraisal itself, which the petitioner contends is far too low, as he can satisfactorily prove ; and to this end he offers the deposition of judge Stower and others, residing in the vicinity, who concur in estimating the land, in 1825, at a price considerably higher than it was appraised :

5th. In not having yet received the thirty-seven dollars paid by him for interest and cost on the 16th of June, 1825, and to which, as the accounts have been stated, he is undoubtedly entitled. The reason assigned for the delay, is want of legal authority in the Comptroller to refund money under such circumstances :

6th. In receiving no interest on the \$145.21, which was found due to him, as of the 16th of June, 1825.

Your committee, under these circumstances, have found some difficulty in arriving at a satisfactory conclusion, in reference to some of the items of this claim ; and, knowing that the Senate would not pass upon the matter without a full explanation and understanding of it, they ask leave, with this statement of facts, and without a further expression of their own opinions upon them, to report a bill, in blank, for the relief of the petitioner.



**No. 48.**

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**IN SENATE,**

**February 16, 1832.**

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**REPORT**

**Of the Commissioners of the Land-Office, on the petition of the devisees, &c. of John Thurman.**

The Commissioners of the Land-Office, on the petition of the heirs, devisees and grantees of the late John Thurman, referred to them by the honorable the Senate,

**RESPECTFULLY REPORT:**

That, in pursuance of the 19th section of the act, ch. 32, of 1789, the Commissioners of the Land-Office entered into a contract with Zephaniah Platt, Platt Rogers and John Thurman, for the making of certain roads, in the northern part of the State, in consideration of a grant to be made to them of 25,000 acres of land; and the Surveyor-General was directed to cause said lands to be surveyed.

In 1792 William Keese, having been respectably recommended as a surveyor, was employed to make a survey of a tract of 3,500 acres, as part of said 25,000 acres, at the outlet of Scarcorn lake, a copy of whose map, and description thereof, is herewith communicated: and letters patent were accordingly issued in 1795, to John Thurman.

In 1803 the Surveyor-General's deputy, George Webster, was employed in surveying the vacant lands, adjacent to the south and east bounds of said patent, which he found, run out and marked, as represented on the map accompanying the petition by the letters D. I. and I. H.

In 1808 the same deputy was employed to make surveys, that made it necessary to ascertain the lines of said patent, which he

[S. No. 48.]

did by surveying the same according to the description thereof in the grant from the State ; from which it appeared that gores of vacant land were left along the north and east bounds of the patent. These gores he then surveyed into suitable lots for sale.

This state of things was, in the first instance, caused by Mr. Keese's assuming for the easternmost corner of township No. 24, of Totten and Crossfield's purchase a point more than a mile from it. Besides, it appears from a map, purporting to be a copy of one made of said patent by Robert Moxham, from his survey thereof in 1797, that he commenced at the true place of the easternmost corner of said township. No. 24, and run thence easterly, not 50 chains, as given in the patent, but 58 chains, as found by Webster ; and then, with the course given in Keese's survey, to Scaroon lake ; and he extended his survey along said township, not 330, as given in the patent, but 442 chains. He has also run the northerly bounds 110 chains, instead of 105 chains 50 links. His survey embraces all the ground within the lines D. B. C. L. H. I. D. Moxham's map appears to be from a survey of the lots into which the tract is divided, according to which Thurman has probably made his sales. The aggregate contents of these lots is about 4,930 acres.

In the Journal of the Assembly of 1810, at page 91, may be seen a communication from the Surveyor-General relating to this subject, in consequence of which the Legislature at that session passed the 3d section of the act, ch. 141, which confirmed to the patentees the lands erroneously comprehended by their surveys, provided that they paid into the treasury, within two years, the appraised value of the land taken in by an improper extension of their bounds. The proprietors of this patent did not avail themselves of the provisions of this act. By the act, ch. 161 of 1817, the section enacted in 1810 was revived for one year from the passing of the act, from a desire to prevent the difficulties which are now presented to the Legislature. Those for whose benefit those provisions were made, have, for what cause is unknown, paid no attention to them.

In 1823 the Commissioners of the Land-Office, concluding that no efforts were intended to be made by the proprietors under the patent to disentangle themselves from their embarrassments, considered it their duty to direct sales to be made of these gores, as the undoubted property of the State. The lots sold are so marked on the petitioners' map ; for the others no applications have been made.

According to the report of the surveyor, the average value of the six lots of the most westerly gore is 141 cents ; of the three next east 180 cents ; and of the ten along the east bounds of the patent 79 cents per acre.

The survey of Mr. Webster, made according to the bounds given for the patent, includes about 2,180 acres, exclusive of the water of the Scaroon lake, leaving a deficiency of 1,320 acres, for which the proprietors under the patent are equitably entitled to a compensation.

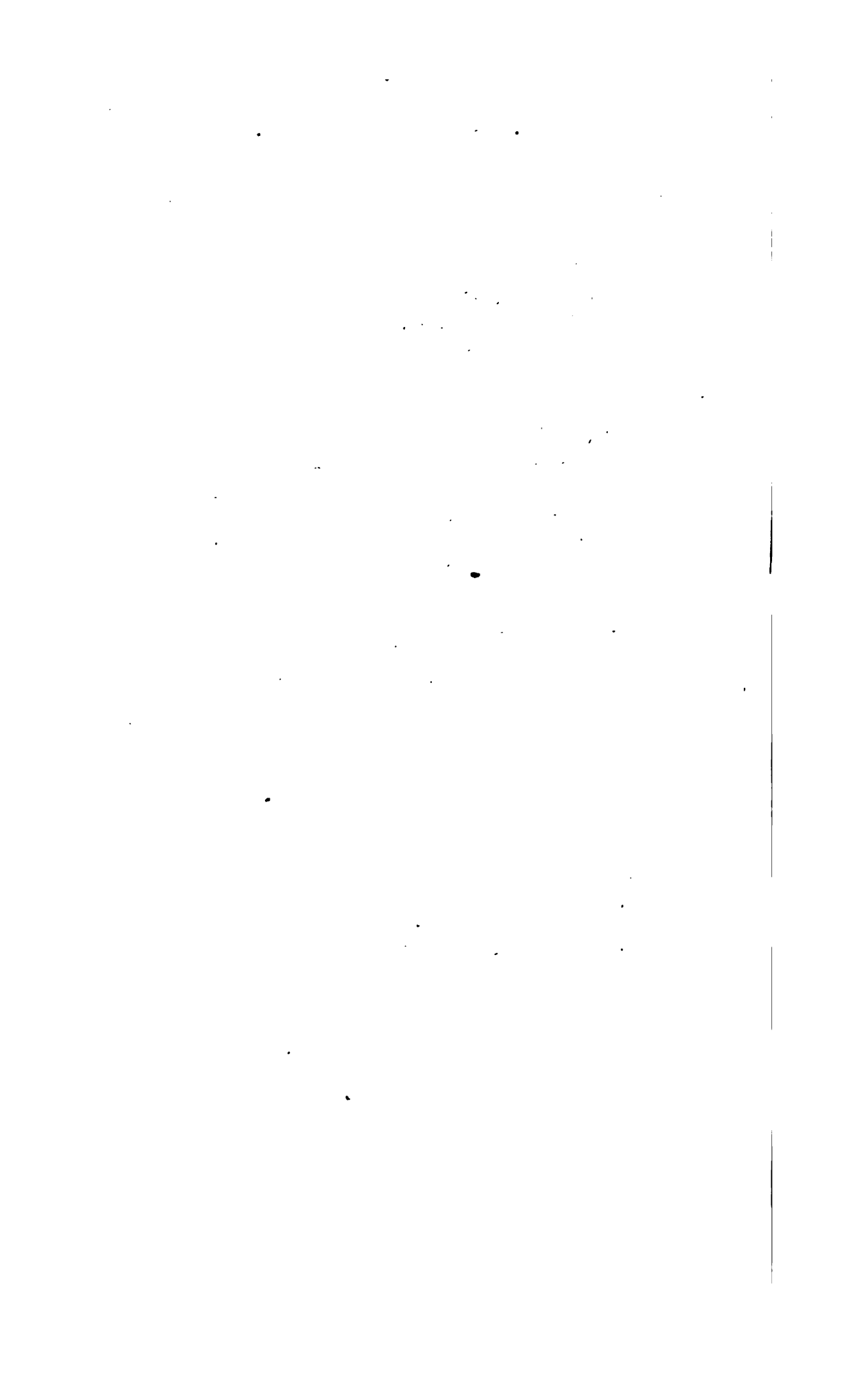
Respectfully submitted.

SIMEON DE WITT, *Surveyor-General.*

SILAS WRIGHT, JR. *Comptroller.*

A. KEYSER, *Treasurer.*

*February 16, 1832.*



No. 49.

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IN SENATE,

February 17, 1832.

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REPORT

Of the Canal Board, in answer to a resolution of the Senate, requiring that Board to report the amount received for tolls on packet boats and passengers for the two last years.

STATE OF NEW-YORK, }  
CANAL ROOM, 13th Feb. 1832. }

The Canal Board, in answer to a resolution of the Honorable the Senate of the 26th January last, in the words following :

“ *Resolved*, That the Canal Board report to the Senate, with all convenient speed, the amount received for tolls on packet boats and passengers on the Erie canal for the two last years, designating the amount received for passengers in packet boats, and the amounts received for passengers in the line or other boats :”

RESPECTFULLY REPORT :

That the amount of tolls received from passengers transported upon the canals of the State, for the three years now last past, as appears from the accounts kept in the Comptroller's office, has been :

In the year 1829,

|   |             |
|---|-------------|
| Tolls received from the transportation of passengers in packet boats,.....        | \$4,781 55  |
| Tolls received for the transportation of passengers in line and other boats,..... | 21,514 71   |
|   | <hr/>       |
|   | \$26,296 26 |

In the year 1830,

|  |            |
|--|------------|
| Tolls received from the transportation of passengers in packet boats,..... | \$7,125 27 |
|--|------------|

Carried forward,....

[S. No. 49.]



Brought forward,....

|  |           |                 |
|--|-----------|-----------------|
| Tolls received from the transportation of<br>passengers in line and other boats, ..... | 26,735 02 |                 |
|  |           | <hr/> 33,860 29 |

In the year 1831, from the boats which  
during this year made statements of passen-  
gers, and did not commute :

|   |            |                 |
|---|------------|-----------------|
| Tolls received from the transportation of<br>passengers in packet boats,.....         | \$8,834 93 |                 |
| Tolls received from the transportation of<br>passengers in line and other boats,..... | 3,422 75   |                 |
|   |            | <hr/> 12,257 68 |

On the twenty-fourth day of March, 1831, the Commissioners of the Canal Fund, pursuant to the authority given to them by sections 148 and 149 of title 9, chapter 9 of the first part of the Revised Statutes, established regulations for a commutation to be paid in lieu of the tolls chargeable upon passengers, and in discharge of the obligation to make statements of the passengers transported. These regulations imposed a toll upon the boat, for which commutation should be made of one cent and three mills per mile, equal to an average of six and an half passengers, for every mile such boat should navigate the canals during the season.

These regulations were confined to the freight boats only, and no regulations for the commutation as applicable to packet boats were made. The number of line boats which have availed themselves of these regulations, and consented to pay the commutation of one cent and three mills per mile upon the boat, in lieu of the tolls payable upon passengers, and in discharge of the obligation to make statements of the passengers transported, is one hundred and eighty-one; and the number of freight boats, not belonging to any line, which have commuted in the same manner, is twenty-five; making the whole number of freight boats for which commutation has been made, two hundred and six.

The Canal Board have no means of ascertaining the amount which has been in fact received from these commutations, unless they should direct the examination of the rolls of all the collectors, and through the entries upon those rolls should attempt to trace each of these two hundred and six boats, for the purpose of learning how many miles were actually navigated by each boat during the past

season. This labour, if attempted, would be subject to many errors, and would probably so far delay this report as to defeat the object of the Senate in making the call.

The Board, therefore, have concluded not to make the attempt ; but it may not be amiss for them to communicate the statements upon which the rate of commutation was fixed by the Commissioners of the Canal Fund. Upon inquiry, they ascertained that a line boat, as a fair average of its business, would make twenty-eight entire passages from Albany to Buffalo, or the reverse, during an ordinary season of navigation. The commutation upon a boat for a single passage would be \$4.719, and for twenty-eight passages, \$132.13. At this rate of estimate, the 181 line boats for which commutation has been made, would have paid ..... \$23,915 53

Add the same estimate for the 25 freight boats not belonging to any line, which commuted, but upon the assumption that they will have made but fourteen passages each, ..... 1,651 50

Add also the tolls paid for 1831, by 98 freight boats, which did not commute, but made statements in the former mode, ..... 3,422 75

Showing for 1831, exclusive of the packets, an am't. of \$28,989 78

This amount for 1830 upon freight boats, when no regulations for commuting existed, and when all these boats made statements, was \$26,735.02 ; a sum less than that shown above for 1831, by \$2,254 .78. The estimate, however, is probably too large, as it is more than likely that some of the line boats may not have performed the full number of miles included in the calculation. Still the comparison will go far to show that nothing is lost to the canal revenues by the system of commutation which has been adopted ; and the experience of the last season has fully shown that the change has greatly contributed to the convenience of the navigators, in relieving them from the trouble and responsibility of making the statements of passengers, while it is believed that this mode of collecting this part of those revenues is much less liable than the former to frauds and impositions. The keeping of the accounts also in the Comptroller's office, is much simplified, and a heavy burden is taken from the collectors of tolls.

The resolution would seem to call for the amount of tolls received upon the packet boats themselves, separate from the tolls paid upon the passengers transported therein. It is not in the power of this Board to answer that call, without the same examination which would be required to ascertain the amount paid for commutation. The number of packet boats navigating the canals of the State for 1831, is believed to have been seventeen. The rate of toll charged upon these boats is six cents per mile, with the exception of those navigating that portion of the canal from Schenectady to Utica. Those boats paid six cents for the year 1829, fifteen cents for the year 1830, and eleven cents for 1831. The established toll upon each passenger during the whole of this period, has been two mills per mile in cases where statements are made, and the tolls paid upon them.

All which is respectfully submitted,

SILAS WRIGHT, JR.  
JONAS EARLL, JR.  
S. YOUNG,  
A. C. FLAGG,  
W. C. BOUCK,  
A. KEYSER.

*Dated Albany, 13th February, 1832.*

**IN SENATE,**

**February 17, 1832.**

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**REPORT**

**Of the committee on roads and bridges, on the petition of the inhabitants of Whitestown, Oneida county, praying for the passage of a law to raise an additional sum of money for the support of roads and bridges in said town.**

The committee on roads and bridges, to whom was referred the petition of the inhabitants of Whitestown, in the county of Oneida,

**REPORTED :**

That the petitioners ask for the passage of " a law, authorising the board of supervisors of said county, whenever a majority of the electors of said town at their annual town-meeting, shall so direct, to levy and collect in said town, such sum of money as may be necessary for the support of roads and bridges, as the electors, by their votes, shall direct, not exceeding, in any one year, two hundred and fifty dollars over and above the amount now allowed by law." The petitioners ground their application upon the allegation, that the present provisions of law, by which they are limited to two hundred and fifty dollars annually, is inadequate to the necessary expenses and support of their bridges ; and that they have in vain appealed to their board of supervisors for relief.

The committee has no reason to doubt the facts stated by the petitioners ; and had the necessary preliminary measures been taken, they see no ground upon which the prayer of the petitioners could justly be denied. But in title 3, chapter 7, of the first part of the

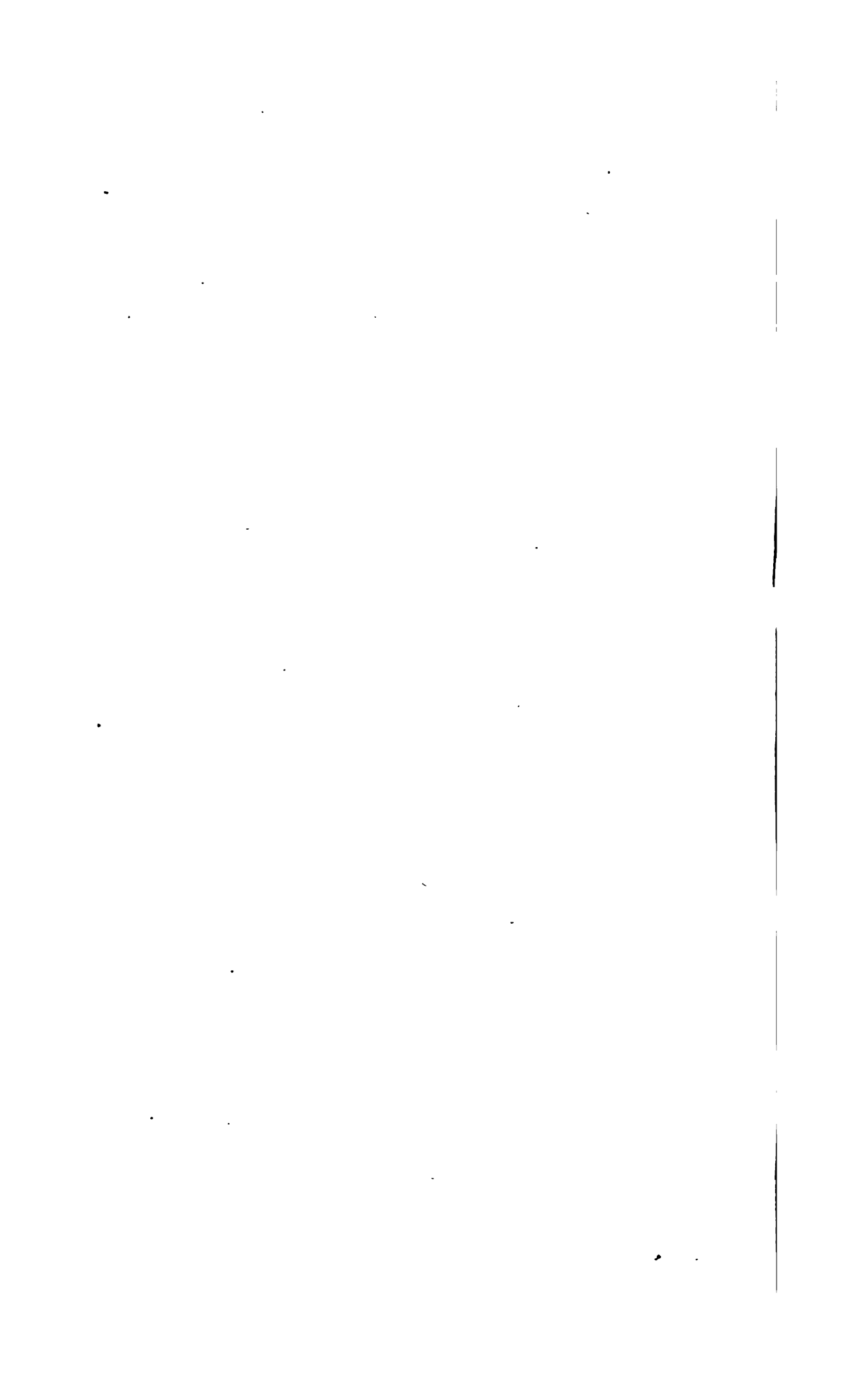
Revised Statutes, it is made "the duty of all persons applying for the imposing of a tax for making or improving a road, *or for any other local purpose*, in any county, where all or any of such county are proposed to be taxed, to give notice of such intended application," &c. In this case, the notice made necessary by the above provision has not been given, which omission, the committee feel bound to consider conclusive against the petitioners. It is true the difficulty may be overcome by legislative power; but as the provision is wise and salutary, it ought not to be violated, unless in cases of great importance, or the most pressing necessity. Aware of the force of precedent, and anticipating numerous similar applications, under the law as it now stands, the committee feel bound to recommend a strict adherence to the conditions of that law.

As similar applications are now before the committee, under a like want of notice, they have supposed themselves justified in taking a more extended view of this subject, than is presented by the petition under consideration.

Under the present law, it is evident, that many cases will occur, where adequate provision for the support of bridges cannot be made, and recourse will be had to the Legislature in each case; for it is understood that appeals to boards of supervisors have generally proved fruitless. The law, as it now stands, is not only inconvenient and insufficient for the purpose intended, but in many instances operates unequally. Towns which are extensive in territory, with superior improvements, and great natural advantages, can be taxed no more in the aggregate for the purposes under consideration, than may be necessary for the like purposes in towns of inconsiderable wealth. It seems but just that rich and populous towns should be permitted to tax themselves, when willing, at least to a reasonable extent, before they are required to appeal to the supervisors to enforce contributions from towns less able, or already more heavily burthened.

To obviate, in some measure, the existing difficulties, and to render less frequent the calls for special legislation on this subject, your committee have come to the conclusion that the present highway law ought to be so amended as to permit the towns, under certain regulations and restrictions, to raise annually a greater sum than two hundred and fifty dollars, and not exceeding five hundred dollars,

for the improvement of roads and bridges ; and while they feel themselves compelled to report against the petitioners, the committee recommend that the relief be given by general provisions ; for that purpose they have prepared a bill, and instructed their chairman to ask leave to introduce the same.



**No. 51.**

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**IN SENATE,**

**February 18, 1832.**

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**REPORT**

**Of the Comptroller, relative to the accounts of the  
late clerk of the Auburn State Prison.**

COMPTROLLER'S OFFICE, }  
*Albany, 18 February, 1832.* }

**The Hon. EDWARD P. LIVINGSTON,**  
*President of the Senate.*

**SIR—**

Herewith is transmitted a communication made in relation to the reference by the Senate, on the 30th day of January last, to this office, of so much of the annual report of the Inspectors of the State prison at Auburn as relates to the accounts of the late clerk of that prison.

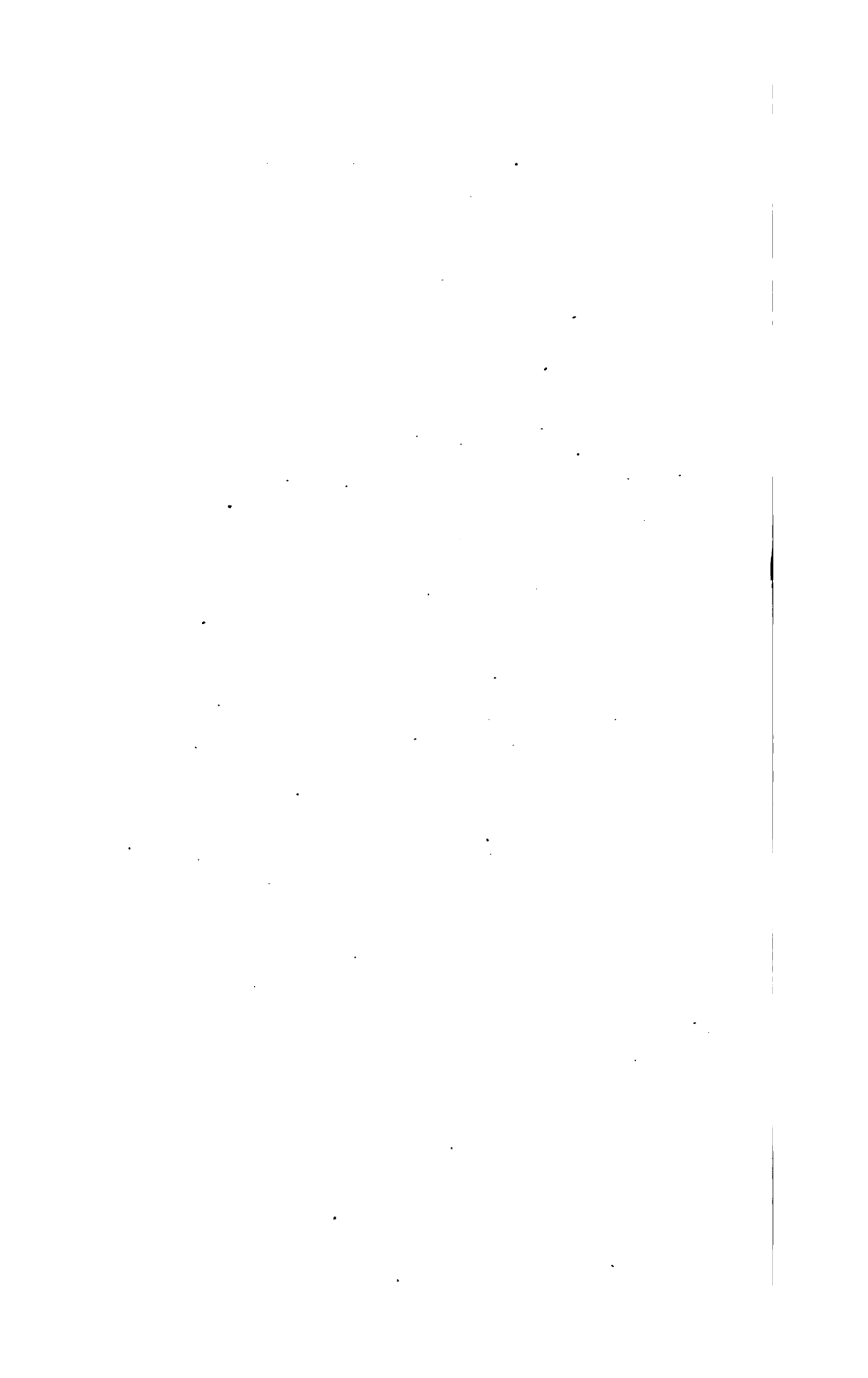
I have the honor to be,

With great respect,

Your obedient servant.

**SILAS WRIGHT, JR.**





# **REPORT, &c.**

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STATE OF NEW-YORK, }  
COMPTROLLER'S OFFICE. }

On the subject of the reference, made on the 30th day of January last, of so much of the annual report of the Inspectors of the State prison at Auburn, as relates to the accounts of the late clerk of that prison, the Comptroller respectfully asks leave to make to the Senate the following

## **COMMUNICATION :**

The agent of the prison has presented himself with the prison books at this office, and has afforded every aid in his power to a minute investigation of them, and to a full understanding of their condition. This understanding the Comptroller believes he now possesses, and it is his present object to give it to the Senate, in a manner which will be intelligible to that body, as in his opinion legislative aid should be rendered to the agent of the prison.

It will be perceived, by a reference to the laws which govern the State prison, that the agent of each prison is made solely responsible for all moneys received ; that he is the only officer who gives bail to the State, and that he is the only person to whom money can be legitimately paid. Still when the provisions of the law are compared with the necessary practices at both prisons, and especially at the prison at Auburn, the Comptroller believes it will be fully apparent that moneys must come into the hands of some person, other than the agent, or that sources of revenue from that establishment must be entirely abandoned.

The agent of each prison has the personal care of the convicts upon his hands, he is solely responsible for their safe custody and for the rigid discipline to be preserved among them, he is to provide their food and all other necessities ; he is to see that all the subordinate officers discharge their duties, and he is to direct the employment of

the convicts. This last duty involves the necessity of frequent and considerable absences from the prison walls. At Auburn, especially, the principal employment of the convicts is in the business of persons who have contracted for their services. These contracts are to be made as unemployed men are thrown into the prison. Sources of employment in this way are to be sought, where they are not already presented, and collections are to be made from the contractors, to support the men and defray the expenses of the prison. That the agent can discharge all these duties and be constantly confined within the prison grounds is not possible. Much of his time must be devoted to the out door cares of his immense establishment.

This fact being kept in mind, it should be known that at the Auburn prison it has long been the practice to charge an entrance fee of twenty-five cents to persons visiting the prison. This has been a source of revenue to that prison, established by a regulation of the Board of Inspectors, and yielding regularly from one to two thousand dollars per annum. The receiver of this revenue can not always be the agent, as it has been shown that he can not be at all times confined to the prison, and the hour of the call of visitors will, of necessity, be regulated by the convenience of each individual who chooses to pay the charge and indulge himself with a view of the establishment. Hence it became necessary to fix upon some individual, who should be the regular receiver of this charge, and whose duties would be the least interrupted by an attention to these collections. The clerk was at once fixed upon. His whole employment was at the prison, and in the office assigned for the keeping of the books and accounts. That office was accessible to the visitors, and this person was always to be found there, if found at all, at the place where his duties required he should be.

A check book was procured, from which the clerk was directed to issue to each visitor, or company of visitors, claiming admission, an admission ticket, to be delivered upon the receipt by him of the amount chargeable. A proper margin was prepared to this check book, upon which the clerk was to make the entry of the date of the ticket, the number of persons admitted by it, and the amount of money paid to him. The ticket was to be taken by the visitor to the door of the prison and delivered to the guard stationed there, who regularly deposited it in a box prepared for that purpose; and the intention was, at the close of every month, to compare the tickets

so deposited with the entries in the margin of the check-book, as a manner of correcting the account of these receipts of money by the clerk.

This comparison the agent avers has always been made by some officer of the prison, when not by himself; but the entire confidence in the integrity and faithfulness, and accuracy of the clerk, prevented an examination of the transfer of these receipts to the prison books, and of the entries made for that purpose.

The clerk of this prison was also made, in practice, the receiver of certain other small sums, from the following sources: Small jobs are frequently done in the blacksmith's and carpenter's and stone shops for customers, and the pay for which is made at the time when the work is taken from the prison. There is also a shop where the clothing for the prisoners is manufactured, and where also weaving of all descriptions is done for customers. These customers pay for the weaving when they take the work, and these sums, therefore, were received by the clerk, as the customers might call in the absence of the agent.

It is found upon an examination of the books, that the late clerk kept a small day-book, separate from the day-book of the prison, upon which it was his habit to make the entries of these small receipts by himself, and that at the close of each month a summary was made of the whole amount of the receipts for the month from each source, and a total footing obtained.

These practices once adopted, and being found to contribute to the convenience of this complicated business, another very naturally grew out of them, and became equally well established. It very often happened that persons having very trifling claims against the prison would call for their pay in the absence of the agent; the clerk, having money in his hands from the sources before mentioned, would make the payment and take the necessary voucher. At the close of the month, these vouchers were produced and delivered to the agent; a credit for their amount was passed to himself upon his private cash book, to answer for so much of the money with which he was then charged; a balance was struck; the money remaining on hand was deposited to the credit of the agent, and the amounts received during the month, with a designation of the source of each class of the receipts, as shown by the summary, was carried into the prison books and debited to the agent. In this manner the business of

these small receipts by the clerk was conducted, from the commencement of the regulations to charge an admission fee to visitors until somewhat lately. Then it is found, that the clerk commenced the practice, instead of depositing the balances which the settlement of the accounts of the month showed to be in his hands, of carrying that balance forward, and charging himself with it in the opening of the account for the succeeding month.

This practice, though observed, created no suspicion in the mind of the agent, inasmuch as deposits were occasionally made, and it might be convenient for him to retain, at the close of the previous month, a sum sufficient to answer any calls which might be made before the receipts of the following month should be sufficient to answer them.

Thus these accounts were kept without a shadow of suspicion, as to the entire honesty of the clerk, until a very short time before his death. He had been the clerk of the prison for almost eleven years, under various changes in the board of inspectors, and under several agents, with the unvarying confidence of all, and of the community. The present agent was appointed in November, 1829, and in justice to him, it ought further to be borne in mind, that before this period, the clerk of the prison had become an officer entirely independent of him, or of the inspectors, receiving his appointment from the Governor and Senate. Hence, so far as his duties as clerk and book-keeper were concerned, he had neither a right to dictate to him, nor was he officially bound to inspect his doings any further than his own indemnity required.

It unfortunately happens that he did not do so to that extent, and therefore, in some degree, at least, the present difficulties are presented.

The agent relates, that on the 10th day of November last, he received from his excellency the Governor, an order to repair to Mount-Pleasant, and to take from that Prison, and transfer to Auburn, sixty convicts; that on the same day he left Auburn, in obedience to that order; that but a day or two before he left, he saw the first circumstances which excited any suspicion in his mind as to the honesty and faithfulness of the clerk in the disposition of the moneys which came into his hands; that the facts noticed by him, and which excited doubts, were not of a character to furnish proof of

dishonesty, or to authorise him even to suggest suspicions to any one, but to give rise to fears, and to determine him upon his return to examine the books more minutely than he had done, and to satisfy himself of the true state of the accounts ; that he returned to Auburn with his prisoners, from Mount-Pleasant, on the 22d or 23d day of November, and that as soon as he had disposed of this addition of convicts, and arranged the affairs which had been left unattended to in his absence, he turned his attention to the accounts of the prison ; that this was on the 2d day of December, and the day after the settlement of the pay-roll of the prison for the month of November, and after the officers had received their pay for that month ; that at about the hour of 10 o'clock in the forenoon of that day, he went to the bank to deposit a payment on that morning, leaving the clerk in his office ; that when he returned, he was told that the clerk had left the prison sick ; that from this absence he never returned, but died on the 7th day of the same month ; that in the mean time, he (the agent) had made such cursory examinations of the books as to convince himself that all was not right, and had mentioned his suspicions, confidentially, to one or two personal friends ; that immediately after the interment of the clerk, he engaged the assistance of two competent persons, and commenced an entire examination of the accounts, from the date of his appointment as agent, and of all the papers to be found in the clerk's office.

The agent further relates, that upon his examination of the private day-book of the clerk, before spoken of, and upon which was, or purported to be entered, the receipts of money by himself, they found that in balancing the account for June, 1831, which is done in the hand-writing of the clerk himself, there was shown to be in his hands the sum of \$181.37 ; that upon the opening of the account for July upon the same book, that balance is carried forward in the same hand-writing, and charged to the clerk, but has been subsequently erased with the pen ; that in making the summary for July, there is an entire erasure where this balance should have been placed according to the established custom of keeping this book ; that the original footing of the summary for that month, in the figures of the clerk, and yet perceptible upon the book, was \$385.78, which footing is erased with the pen, and a second footing below, also in the figures of the clerk, given at \$204.41, which last footing is precisely the amount of the receipts of the month, without including the balance on hand, of \$181.37, at the close of June ; that upon the credit side of the book, there is also an entire erasure of footings where

it would seem that a balance of the accounts of the month had been struck, but there is not enough of the impression remaining to determine what the entry was, but that no balance made by the clerk now appears upon the book at the close of this month ; that upon striking a balance as the book stands, without including the funds in hand at the close of June, there is shown to have been a further amount in the hands of the clerk at the close of July, of \$55.69 ; that upon the opening of the account for August, no balance was carried forward at all ; that in making the summary for August, there is another entire erasure, where the balance should have been carried forward, but no impression remains to render it possible to determine what was erased ; that the footing of that summary is accurate, but embraces only the receipts of the month, and excludes both of the balances for June and July, previously mentioned ; that the accounts for this month are not balanced by the clerk at all, but the balance taken from the book as it was found, shows a still further amount in his hands from the receipts of August, of \$49.79 ; that in opening the accounts for September, no balance whatever appears to have been carried forward, and in the summary for that month, there is no appearance upon the book that any such entry was ever made, but that the summary consists solely of the receipts of the month ; that this summary was regularly footed, and the balance of the accounts of this month, struck entirely in the figures of the clerk, showing a further sum in his hands of \$30.80.

This was the close of the fiscal year, when it became necessary to make the annual account, and consequently to balance all the books. This balance, therefore, would seem to have been made from that necessity, and the amount shown by it to be in the hands of the clerk was deposited to the credit of the agent on the 28th day of October after. It ought here to be mentioned, that the agent states that his custom is to deposit in the bank all moneys received by him for account of the prison, and that by an arrangement with the bank, the name of the person making the payment is always entered in the bank book ; that this bank book is regularly kept by the clerk ; that when he wishes to make a deposit he calls upon the clerk for it ; and that when the clerk wished to deposit, the bank book was in his keeping. He further states, that all his payments have been made by checks upon these deposits, and that the only payments not so made were the small payments made by the clerk in the manner before related.

The agent continues the history of his examination of this private day-book of the clerk, as follows :

The account for October was opened without carrying forward any balance from the receipts of any previous month, and the summary for that month embraces only the monthly receipts. The credits for this month are also entered on the book and footed, but no balance of the account is made. The entries and figures are all in the hand-writing of the clerk, and the balance appearing from the respective footings, which are found to be correct, shows a further sum in the hands of the clerk, from the receipts of this month, of \$97.65. This balance is not carried forward in opening the account for November, and the entries for that month only embrace the receipts and payments for the month. The clerk had not made his summary for this month when he left the office for the last time; but upon making it from the entries, all of which, with one exception hereafter mentioned, are in his hand-writing, it is found that there remained in his hands from the receipts of the month, after crediting him with \$63.75 found in his desk, the sum of \$7.43. These are the only errors of this description found in the examination of this private day-book which have any appearance of intention, or which materially affect the accounts in any way, except a receipt of \$50 by the clerk from a contractor, entered as having been paid on the 1st Dec. 1830. This sum is charged by the clerk to himself upon this day-book, in the account for that month, but is not included in making up the summary, and is not shown at all in the balance of the accounts of that month as made by him upon the book. It is further found from an examination of the prison books, that this sum has been carried on to the book upon which the report was made of the state of the accounts for each month to be laid before the inspectors, but on to no other of these books. The consequence is, that the contractors have not received any credit for this payment, and that the agent has not been charged with it. This closes the history of the private day-book. It should, however, be remarked, that all the before mentioned sums, except the \$50, were regularly, at the close of each month, carried on to the prison books and charged to the agent, as is found by comparing the entries upon those books with the respective summaries upon the private day-book. These monthly balances amount together to \$391.93, so that it would seem that the agent is charged with that amount, which did not come to his hands, but was used by the clerk, as the bank



book shows no deposit by the clerk on account of these receipts, except the single deposit of \$30.80 before mentioned, being the balance in his hands of the receipts of September.

The first error, in point of time, which has been found upon the prison books, is in relation to a payment of \$24, made by David Hayden & Co., contractors. This payment stands entered upon the day-book under date of July, 1830, but under circumstances going strongly to show that it was entered there out of its order, and subsequent to the time indicated by the date of the entry. The payment is found posted to the credit of the contractors, but after the posting of another sum of \$100, paid upon the same account in the following month. This payment of \$24 has not been charged to the agent on the books, nor has the money ever been deposited to his credit. The amount, therefore, has been lost to the State, though it does not in any way affect the standing of the accounts of the agent, as they have been rendered.

The next error in the order of time, is one of \$273. This sum was paid to the agent on the 29th of November, 1830, and on the same day was deposited by him in the bank, as shown by the bank book. The payment was made by Isaac A. Slover upon a note. No entry of this payment is found upon the prison day-book, but the amount is found in the cash book carried back into the accounts of the month of October, 1830, and there entered with two other payments made by the same person at previous dates. At that time the fiscal year of the prison closed, on the 31st of October, and the effect of carrying back this entry into that month was to place the payment with the accounts, not only of a month, but of a year, the accounts for which had been then already rendered. To prove conclusively that this design must have been entertained, the entries upon the cash book for October, with the exception of three at the close, are not in the hand-writing of the clerk, but in an entirely different hand, as are the entries of the two payments made by Slover and regularly entered in that month. The column of figures is footed, and the footing now stands upon the book in the figures of the clerk. The entry in question, as to the payments made by Slover, as now appearing upon the book, is as follows: "Carpenter's shop—

\$

J. A. Slover on note \$74.95 V. \$11.52 273 \$359 47."

The whole of the above entry is in a hand-writing other than that of Mr. Bodley, except the figures 273, the character \$ put above

the line, as seen above, because there was not room for it upon the line, and the figures 359, in the footing of the three sums.

The latter figures are plainly Mr. Bodley's, and the 59 of the footing are as evidently written upon erasures. Then to show that this sum of \$273 was placed there after the accounts of that month and of the year to which it belonged had been rendered, the footing as now standing upon the book, agrees with the footing of the annual account, for the year ending 31st October, 1830, as made out and rendered to this office by him. But the figures now standing in the column upon the book, correctly added, will not produce the footing standing there in his figures, but a sum greater than that footing by exactly \$273, the sum which it is alleged has been placed there since that account was closed.

No entry of the receipt of this \$273 appears in the accounts for November, 1830, on the 29th of which month the payment was made, and the money deposited in the bank, to the credit of the agent, as is distinctly shown by the entry upon the bank book. What then, it will be asked, could have been the inducement of the clerk to make this erroneous and fraudulent disposition of this sum, which was not paid to him, but to the agent? The inquiry can admit of but one answer. The clerk had then adopted the practice of carrying forward the monthly balances in his hands, instead of depositing them, though the receipts were regularly, at the close of each month, transferred from his private day-book to the books of the prison, and debited to the agent, as the books show. If then these balances, thus carried forward in his private account, and charged regularly to the agent in the public accounts, had accumulated to any considerable amount, the error would necessarily appear, and the agent would seem to be in default. If, however, the actual receipts by the agent himself could be diminished to an extent equal to the accumulation of these balances, the harmony of the accounts would not be disturbed, and the default of the clerk not, therefore, discovered. Here, then, was \$273 paid to the agent, and regularly passed to the credit of the payor, so entered in the accounts as not to appear as a charge against the agent, in the rendition of the accounts of the prison to this office, though it would appear in the bank account, and thus disposed of, would remain in bank to meet any equal deficiency from other sources.

The next error in order is a payment of \$60, made by C. & P. Hayden, contractors, to the clerk, and entered on the day-book o

the prison as of the 15th November last, it being in the absence of the agent to Mount-Pleasant, under the order of the Governor, as before related. This money is entered upon the day-book, and posted to the credit of the contractors, but has never come to the hands of the agent, or been deposited in bank.

Another payment of the same amount to the clerk, is also found to have been made by Amos Underwood, a contractor, which is entered on the day-book, under the same date with the last mentioned amount, though the receipt given by the clerk for this sum, which the agent has obtained and presents, shows that the payment was made on the previous day. This sum also was paid to the clerk during the above mentioned absence of the agent, and has been regularly posted to the credit of the contractor, but has not been deposited to the credit of the agent.

Neither of these last mentioned sums are found charged by the clerk to himself, either upon his private day-book or in any other place; though it is found that he paid, during that month, to the contractor for supplying rations to this prison, \$50, which is credited to himself upon this private day-book, and the entry to the debit of the contractor is also made in his account.

The clerk, however, mentioned the receipt of the \$60 from Underwood to the agent, upon his return from Mount-Pleasant, and in making the summary for his private day book for November, the agent charged him with this sixty dollars, and credited him with \$63.75, found in his desk, which left the balance against him for that month of \$7.43, before spoken of.

This closes the list of errors which have been discovered, and which go to show money paid into the hands of the clerk, and not paid over or accounted for by him.

A recapitulation of these cases is as follows:

|  |                 |
|--|-----------------|
| Balance in his hands at the close of June, not carried forward, or deposited or otherwise accounted for, ..... | \$181 37        |
| The same at the close of July, .....   | 55 69           |
| The same at the close of August, .....   | 49 79           |
| The same at the close of October, .....  | 97 65           |
| The same at the close of November, .....   | 7 43            |
| Carried forward, .....   | <u>\$391 93</u> |

|   |                 |
|---|-----------------|
| Brought forward,.....   | \$391 93        |
| The receipt from E. & S. Pease, contractors, entered as of<br>1st December, 1830, but not charged to the agent, or cre-<br>dited to the contractors,..... | 50 00           |
| The receipt from David Hayden & Co. contractors, cre-<br>dited to them, but not carried into the prison account<br>and charged to the agent, .....        | 24 00           |
| The receipt from C. & P. Hayden, contractors, entered<br>on the prison day book and credited to them, but not ac-<br>counted for,.....                    | 60 09           |
| In all,.....  | <u>\$525 93</u> |

This is the total of the money traced to the hands of the late clerk of the Auburn prison, and no account of which is found to have been rendered by him.

It is due to the agent further to remark in this place that he avers that the clerk has never been authorised by him to receive money from contractors, that the receipts before enumerated are all which it is yet known he has assumed to take upon himself, and that these have been discovered in the manner before related, and have not been known to, or sanctioned by him.

The Comptroller considers it proper for him to add that the prison books, before spoken of, or referred to in this communication, have been submitted to him, and that no statement, as drawn from those books, has been made in this communication which he has not considered fully supported by his own personal examinations of the entries in the books, found in the hand-writing of the late clerk, Mr. Bodley. That hand-writing is so peculiarly characterized that he has great confidence in the belief that he can not mistake it, which fact has gone far to strengthen his conviction of the correctness of the conclusions which have been drawn from the books.

It remains to be considered how these practices of the clerk have affected the liability of the agent to the State.

That will be seen in the following summary :

The sums before given as received and expended by the clerk, and which have not been charged to the agent are the \$50 paid by E. & S. Pease, which has not even been credited to them, and the

dual, made on the 30th Sept. last, when the clerk was called upon by the agent to exhibit the true condition of the amount, purporting to be on hand at the close of the then fiscal year. This balance was put down at precisely \$200 more than the true sum, as shown by the account of the individual standing upon the books, notwithstanding two separate papers were found in the clerk's desk, upon which is a calculation of the true amount in the clerk's own figures. Still the error may have been a mistake in taking off the figures from those papers, but there is some reason to suppose that it was designed to cover up what would otherwise have shown itself as a deficiency of means to meet the balance standing against the agent, by the annual account then made. In making this same statement, a contrary error of \$90 was made evidently from a mistake by transposing figures in taking a sum from the bank-book. A small mistake of \$9, in posting, is also found to have entered into the same statement; but none of these errors carry suspicion with them, unless it be the \$200 added to the true balance of the individual account.

This closes all the remarks which the Comptroller is able to make, calculated to aid in a correct understanding of the present appearance of these accounts; but he feels it to be a duty he owes to the agent of the prison, to state, that on the 30th day of December, that officer called upon him, in this city, with these books, exhibited to him the most of the facts herein before detailed, and requested advice as to the course proper to be pursued. The advice then given was, that he should return, and make a re-examination of the books and accounts, to render it certain that the frauds had been practised, and that after the Legislature should have been organized, and the committees appointed, he should again repair here with the books and present the facts and evidences to that body.

All of which is respectfully submitted,

SILAS WRIGHT, JR.

*Dated Albany, 18 February, 1832.*

**No. 52.**

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**IN SENATE,**

**February 20, 1832.**

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**REPORT**

**Of the select committee appointed on behalf of the Senate to make arrangements for the celebration of the Centennial Anniversary of the birth-day of Washington.**

The select committee appointed on behalf of the Senate to make arrangements for the celebration of the Centennial Anniversary of the birth-day of Washington,

**REPORT:**

That the object of the joint committee of the Senate and Assembly, has been to give to the day a celebration worthy of the occasion.

In every section of our country we behold a desire evinced to testify the gratitude and respect of the American people for the memory of the illustrious man whose character has thus far been without parallel, and whose name will ever remain a beacon light to the friends of liberty and the rights of man.

In making the necessary arrangements, the joint committee concluded it would be proper to unite with the municipal authorities of the capital of our State. The same course has been pursued in another section of our country, where the Legislature of the State is in session. The most appropriate manner of celebration was, in the opinion of the joint committee, the delivery of an oration, and they have accordingly appointed the Honorable Oran G. Otis, of the Assembly, the orator of the day. Desirous also of accommodating the citizens of the city in which we now are, the joint committee deemed it proper to select some commodious building for the delivery of the

address. The Assembly chamber would contain but a small number of those who wish to attend, and would tend to an odious system of exclusion. The North Dutch Church in North Pearl-street, which has been kindly offered for the occasion, has been selected, and will accommodate a large auditory.

The joint committee have also resolved, that the two branches of the Legislature, with their respective officers, should unite in the procession which will be formed on that day, and the order of which will be published. Both Houses will meet at 10 o'clock A. M. on the 22d instant, at the Capitol, and take such place in the procession as may be assigned them.

It is also recommended, that the Capitol should be illuminated on the evening of that day.

**No. 53.**

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**IN SENATE,**

**February 23, 1832.**

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**REPORT**

**Of the Comptroller, on the petition of George  
Deming.**

**COMPTROLLER'S OFFICE, }  
Albany, 21st February, 1832. }**

**The Hon. EDWARD P. LIVINGSTON.**

**SIR,**

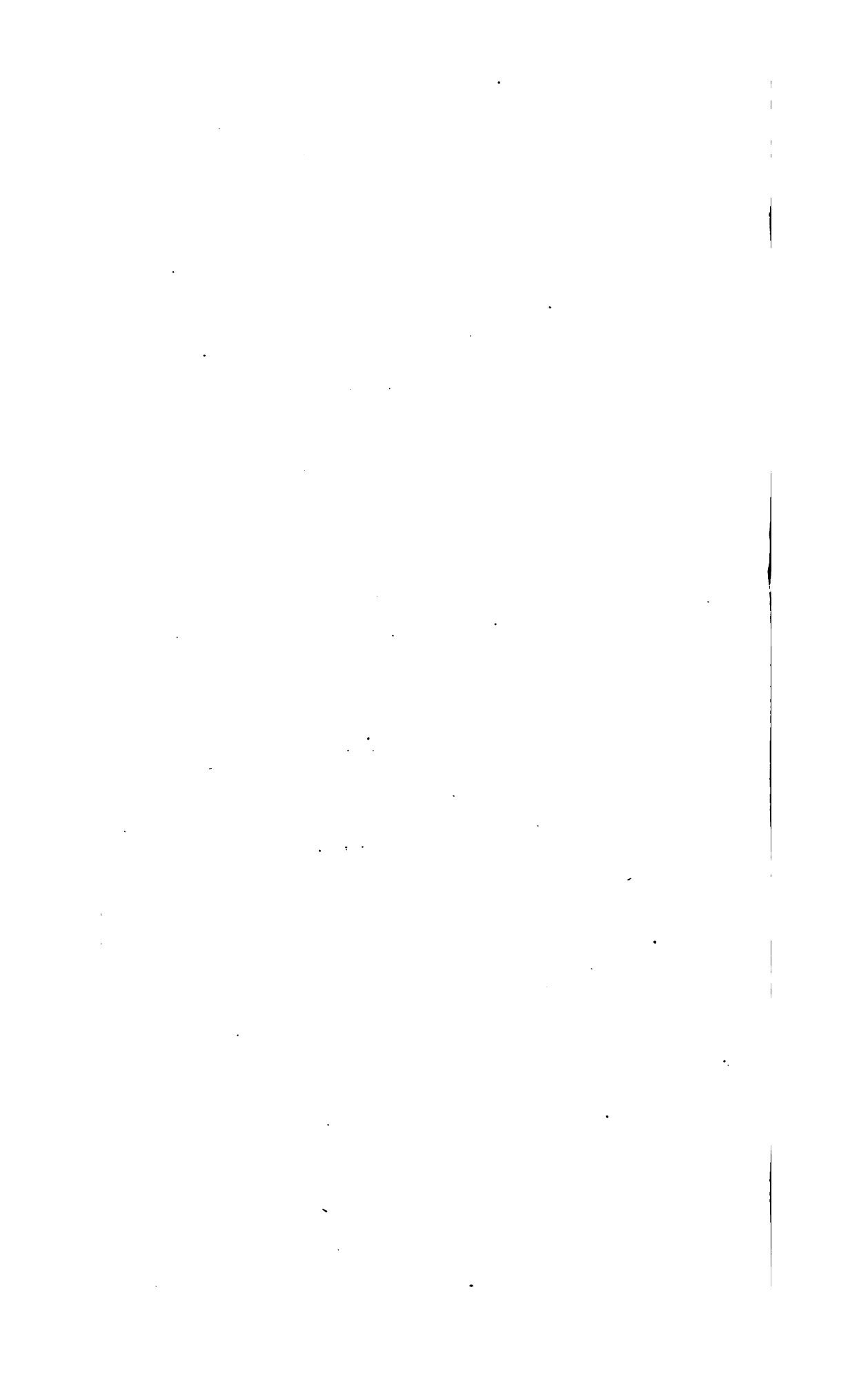
Herewith I have the honor to transmit a report made upon the petition of George Deming, referred to this office by the Senate on the 17th instant.

I am, with great respect,

Your obedient servant,

**SILAS WRIGHT, JR.**





# REPORT, &c.

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STATE OF NEW-YORK, }  
COMPTROLLER'S OFFICE. }

The Comptroller, to whom has been referred by the Honorable the Senate, the petition of George Deming, praying for the payment to him out of the Treasury of the surplus money received upon a re-sale, by the Surveyor-General, of the south half of block number twenty-nine, West-Oswego,

## RESPECTFULLY REPORTS :

That from the books of this and the Surveyor-General's offices, the following appears to be the history of the block named in the petition :

On the 26th day of September, 1815, this block was sold to Samuel B. Beach, for the sum of \$300 ; and \$38 constituted the first payment, leaving of the purchase money due, and for which the bond of the purchaser was taken, the sum of \$262. On the 21st day of November, 1817, a payment of \$41 was made upon the block, \$33.84 of which was credited to interest, and \$7.16 to principal ; thus reducing the principal charged against the block to \$254.84.

On the 19th April, 1826, the north half of this block was sold by the Comptroller for the taxes of 1818, 1819, 1820 and 1821 ; in all, together with the charges, amounting to \$4.63. John Kiersted was the purchaser ; and, no redemption having been made, on the 8th day of December, 1829, the north half of the block so sold for taxes was conveyed to Peter Smith, the assignee of the tax purchaser. This conveyance, by the provisions of the tax law, was made subject to all claims of the State upon the land conveyed. Under this liability, Peter Smith, on the 3d day of June, 1830, paid into the Treasury the sum of \$223.30 ; of which sum, \$95.88 was applied to interest, and \$127.42 to principal, being the full amount of interest and principal due upon the north half of the block conveyed to him by the tax deed.

No other payment of interest or principal having been made upon this block, the Surveyor-General was directed by the Commissioners of the Land-Office to advertise this lot for a re-sale, for default in the payment of the interest thereon. Pursuant to which order, he did advertise the south half of the block for a re-sale on the 14th day of September, 1831; and, no payment having been made prior to the day fixed for the re-sale, the south half of the block was offered at public auction, for the amount due to the State thereupon, to wit: Interest, \$106.04; principal, \$127.42; costs of advertising, \$1.50; in all, \$234.96. The purchase was made by Lynott Bloodgood, for the sum of \$405. Bloodgood paid \$102 as the first payment, and executed his bond for the sum of \$303; which is the present situation of this block, so far as the interests of the State are concerned in it.

During the seasons of 1830 and 1831, repeated applications were made to the Commissioners of the Land-Office for a grant of the south half of this block to the petitioner, he claiming to be the assignee of Samuel B. Beach; but the certificate of the Surveyor-General for the block not having been produced, and the evidence of the loss of that certificate, and of the regularity and validity of the assignment of Samuel B. Beach to the petitioner, not being satisfactory to the Commissioners of the Land-Office, an order for a grant of the south half of the said block was refused, and the petitioner did not therefore make the payment into the Treasury of the amount due to the State upon it.

Hence the re-sale before mentioned was ordered; and the application of the petitioner is, that the surplus money upon the re-sale should be paid to him. During the last session of the Legislature, the law authorising the payment out of the Treasury, to the claimant of lands resold, of the surplus moneys obtained upon such re-sale, was repealed; and there is not, therefore, any law at present authorising that payment.

Should the Legislature conclude, in this case, to direct it, the amount of the surplus money is ascertained as follows:

|   |          |
|---|----------|
| The amount bid by Lynott Bloodgood, on the 14th September, 1831, for the south half of block number 29, |          |
| West-Oswego, .....  | \$405 00 |
| Carried forward, .....  | \$405 00 |

|  |                       |          |        |
|--|-----------------------|----------|--------|
|  | Brought forward,..... | \$405 00 |        |
| Deduct principal due to the State,.....                  | \$127 42              |          |        |
| Interest do .....  | 106 04                |          |        |
| Costs of re-sale, .....                                  | 1 50                  |          |        |
|  |                       |          | <hr/>  |
|  |                       |          | 234 96 |
| Surplus of the bid beyond the amount due the State, .... | \$170 04              |          |        |

It should be remarked that this money has not been paid into the Treasury, and will not be until the bond of the purchaser shall be paid in full. Still, as one quarter of the purchase money was paid at the time of the purchase, and the State holds the whole land for the remaining three-fourths, no doubt is entertained that the \$303 of principal remaining due, with the small amount of interest as yet accrued thereon, are well secured, and will be realized to the Treasury, in the due course of collection of this and similar securities belonging to the General fund.

All which is respectfully submitted,

SILAS WRIGHT, Jr.

*Dated Albany, 21st February, 1832.*



**No. 54.**

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**IN SENATE,**

**February 25, 1832.**

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**MESSAGE**

**From the Governor, transmitting a communication from the Attorney-General, in relation to the claim of John Jacob Astor.**

**TO THE ASSEMBLY.**

**GENTLEMEN,**

I transmit to you, herewith, a communication from the Attorney-General, relative to the litigation on the claims of John Jacob Astor to lands in Putnam county. It will be perceived, by this communication, that three of the five suits, which were ordered to be prosecuted to test the validity of the claim, have been terminated by final judgments in the supreme court of the United States, uniformly in favor of the plaintiff's claim.

**E. T. THROOP.**

*Albany, February 24, 1832.*



## COMMUNICATION

Of the Attorney-General, in relation to the claim of  
John Jacob Astor.

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*Albany, February 22, 1832.*

HIS EXCELLENCY GOVERNOR THROOP,

SIR—

It has become my duty to inform you of the further progress of the litigation under the act entitled "An act to extinguish the claim of John Jacob Astor and others, and to quiet the possession of certain lands, in the counties of Putnam and Dutchess," passed April 16, 1827: and the act "to revive and amend" that statute, passed April 19, 1828. Laws, 1827, p. 333. Laws, 1828, p. 330.

Pursuant to the first mentioned act, five of the suits that had previously been commenced in the circuit court of the United States, for the southern district of New-York, were selected for trial by Mr. Astor, as a test of the real merits of the claim. Three of those suits were brought against James Carver, Nathaniel Crane and Samuel Kelly. In relation to the final determination of the case of James Carver, it will be sufficient to refer to my former communications on this subject. Legislative Documents of 1830, No. 5 and 347.

In June, 1830, the suits against Nathaniel Crane and Samuel Kelly were tried, and the judgment of the circuit court, in both suits, was rendered for the plaintiff. On those trials exceptions were taken to several decisions of the court, and particularly to the charges delivered to the jury. When the bills of exceptions were settled by the presiding judge, the charge in each case was stricken out on motion of the plaintiff's counsel. In consequence of this decision an application was made to the supreme court of the U. S. in February, 1831, for a mandamus to the circuit court, to correct the settlement of the cases. A more full account of that matter may be seen in the Senate Documents of 1831, No. 2, 24 and 28.

The motion for a mandamus was denied. Immediately on learning that fact, and on the eleventh day of March last, I addressed a



letter to the committees on the judiciary in the Senate and Assembly, to whom this subject had been referred, informing them of the result of the motion; and stating that the prospect of ultimate success in the litigation was greatly diminished by the failure of the effort to have the charges placed upon record. That, under the existing laws on this subject, I had no duty to discharge, but to go forward with the litigation, to the final judgment of the supreme court of the U. S. in at least three of the five suits. That I had thought it proper to keep the Legislature advised of the state and progress of the controversy, to the end that further instructions might be given, or the progress of the suits be arrested, should the Legislature, at any time, deem such a course expedient. And it was suggested that I should attend the committees charged with the subject, at such time as would suit their convenience, and lay before them copies of the bills of exceptions and all such further information as I possessed, to the end that they might be able to decide upon the expediency of a treaty for a compromise, or such other course as the public interests might require.

The reason for adopting this, instead of the usual public mode of making communications, was to avoid giving information to the opposite party, which might prejudice the interests of the State in any effort which might be made for a compromise, or in the further progress of the suits, should the Legislature not deem it expedient to interfere.

The Legislature having adjourned without making any order on the subject, nothing remained but to proceed upon the cases as they had been settled by the judge. The bills of exceptions were engrossed and signed, and writs of error to the supreme court of the U. S. were brought, and made returnable in January last. The causes have been argued, and I have just received information that both judgments have been affirmed.

For the purpose of obtaining a decision of the court on the question whether the plaintiff was entitled to recover possession of the lands in controversy without payment for the buildings and permanent improvements thereon, a proper suggestion of the facts was agreed upon by both parties in the case of James Carver, and entered upon the record. The supreme court decided that the plaintiff was entitled to the possession, without paying for the improvements. As the merits of this question was the same in relation to

all the tenants, it was not thought necessary again to bring it before the court; and nothing was said on that subject in the cases of Nathaniel Crane and Samuel Kelly.

It will be seen, by reference to the first mentioned statute, that the plaintiff was to prosecute five suits to judgment in the circuit court, and that the judgment in the five suits respectively should be presented, by writs of error, to the supreme court of the U. S. for review and final determination; and that the judgments and decisions in any three of the five suits, in favor of either of the parties, should be decisive upon the title. As the final judgments rendered in three of the five suits have been uniformly in favor of the same party, it is not perceived that any possible advantage could result from the trial of the two remaining suits.

I am Sir,

With great respect,

Your obedient servant,

GREENE C. BRONSON,  
*Attorney-General.*



**No. 55.**

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**IN SENATE,**

**February 27, 1832.**

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**MEMORIAL**

**Of certain banks in the city of New-York, praying  
a modification of the law relative to the invest-  
ment of the Bank Fund.**

*To the Honorable the Legislature of the State of New-York, in  
Senate and Assembly convened.*

The memorial of several banking institutions in the city of New-York subject to the act entitled "An act to create a fund for the benefit of the creditors of certain monied corporations, and for other purposes," passed April 2, 1829,

**RESPECTFULLY REPRESENTS:**

That your memorialists are of opinion that some modification of the law respecting the disposition of the bank fund is called for, by the fact that no part of the fund created by the contributions already made is yet invested, or so placed as to be productive of any interest, or other benefit to the fund, or to the parties contributing thereto.

The stocks in which the law directs the fund to be invested are greatly above their par value, and consequently not to be obtained without a diminution of the principal of the fund equal to the amount of the premium required and the expenses attending the investment.

The difficulties and delays incident to the purchase of the stocks designated by law, would moreover, in all probability, leave a considerable portion of the fund always uninvested, and of course unproductive.

Your memorialists, therefore, respectfully beg leave to present for the consideration of the honorable the Legislature, the follow-  
[S. No. 55.]

ing proposed modification of the law touching the disposition of the said fund, viz :

That the payments which are required to be made under the second section of the act entitled " An act to create a fund," &c., be made in the following manner : The several corporations to place as a deposit on their books to the credit of said fund, annually, the amount which each is bound to pay or contribute under said act, and furnish to the Treasurer of the State certificates of such deposits.

That such deposits be declared by law special deposits, and in cases of insolvency to be held as preferred debts ; the said deposits to be drawn for and applied as required by the tenth section of the said act, in like manner as if the same were in the actual possession of the Treasurer of the State.

The payments heretofore made by the several corporations under the second section of the said act, or so much thereof as remains unexpended, to be deposited in the several banks making such payments, in proportion to the sums which they have severally contributed, to be held in like manner with the other deposits.

As your memorialists have a deep interest in the security and preservation of the fund thus to be created, and as they are impressed with the belief, that next to the obligations of duty the best security for the full and faithful performance of any service is to be found in an adequate compensation therefor, they would respectfully recommend that the salaries of the bank commissioners be raised to two thousand dollars per annum each, to be paid by the drafts of the Comptroller on the several corporations contributing to the bank fund, in proportion to their respective contributions, and the amount thereof to be charged by said corporations to expense account, leaving the principal of the said fund whole and untouched.

In behalf and by order of the committee of the banks in the city of New-York subject to the " Act to create a fund," &c.

LYNDE CATLIN, Ch'n.

G. A. WORTH, Sec'ry.

**No. 56.**

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**IN SENATE,**

**February 27, 1832.**

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**REPORT**

**Of the Canal Commissioners, on the petition of Henry Thalhimer.**

The undersigned, in behalf of the Canal Commissioners, to whom was referred, by the honorable the Senate, the petition of Henry Thalhimer, submits the following

**REPORT:**

In the spring of 1822 a contract was entered into by Peter Thalhimer of the one part, and the undersigned, then acting Canal Commissioner, of the other part, in the following words:

“Peter Thalhimer, agrees to grub, clear, excavate, embank and construct section 175, of the Erie canal, and to finish the same under the direction of the engineer, by the first day of October, 1823. And the Canal Commissioners agree to pay him therefor as follows, to wit: for the grubbing one hundred and fifty dollars; for the excavation of the hard rock fifty-eight and a half cents; for the excavation of earth eight cents; for embankment twelve and a half cents; for slope wall thirty cents; and for extra work, if any, a reasonable price, to be ascertained and stated by the engineer.

“3d May, 1822.

“(Signed,)      **PETER THALHIMER.**  
                         **S. YOUNG, for**  
                         **Canal Commissioners.”**

The section embraced in the above contract was intersected by a ridge of rock, which rose twelve or fifteen feet above the ordinary surface of the remainder of the section. Into this rock several blasts had been put, before the contract was made with the above

named Peter Thalhimer; and the contractor and the undersigned both knew that it was "hard rock," as is expressed in the contract. It being, however, a ridge, not occupying much extent on the line of the canal, the broken fragments of excavated rock could be much easier removed from the canal than from a long and continuous deep cutting of rock, like sections No. 185 and 186, to which allusion is made by the petitioner.

After the contract was made, as aforesaid, the said Peter Thalhimer took for a partner a man by the name of Thompson, as the undersigned was afterwards informed, between whom and the said Peter there soon arose disputes and quarrels, of a very protracted and obstinate character. In consequence of the intemperate habits and quarrelsome disposition of the said Thompson, who assumed, under his contract with the said Peter, to take the principal charge of the work, the job was unreasonably delayed in its execution; and the undersigned was very solicitous that the said Peter should abandon it, and so informed him several times, in order that it might be relet, to a contractor by whom it would be more peaceably and efficiently conducted. Nor is it a fact, as the petitioner has assumed, that the undersigned requested the contractor, "together with your petitioner, to proceed in its accomplishment, stating that such extra allowance should be made, in the final adjustment of the business as should remunerate him for the work." The undersigned speaks confidently on this subject, from a distinct recollection that such was not his course of proceeding in any case whatever.

After a very considerable loss of time, and probably a correspondent sacrifice of expense, the job was finally completed: and Benjamin Wright, one of the principal engineers, was called upon to make upon it a final estimate and certificate, which is in the following words and figures:

|                                    |          |                                       |            |
|------------------------------------|----------|---------------------------------------|------------|
| "Erie canal,<br>Eastern division," |          | } Sec. 175, P. Thalhimer, Contractor. |            |
| 10,044 yards ex. alluvial,         | 8 cents, | .....                                 | \$803 52   |
| 14,233 embt.                       | 12½      | .....                                 | 1,779 12   |
| 9,083 rock ex.                     | 58       | .....                                 | 5,268 14   |
| 1,243 cubic yards wall,            | 30       | .....                                 | 372 90     |
| 117 perch masonry in culvert,      |          | .....                                 | 117        |
| Pudding culvert,                   |          | .....                                 | 25         |
| Grubbing,                          |          | .....                                 | 150        |
| Carried forward,....               |          |                                       | \$9,515 68 |

|  |            |
|--|------------|
| Brought forward,....                     | \$8,515 68 |
| Remaining stone, (agreed,) .....         | 30         |
| Making farm road and work at bridge,.... | 9 50       |
| “ “ for self “ ....                      | 10         |
|  | <hr/>      |
|  | \$8,565 18 |
|  | <hr/>      |

“I certify the above contract completed, and the value of labor, not specified in contract, is fairly estimated. Decr. 18th, 1832.

“(Signed,) BENJ. WRIGHT, *Engineer*.”

Before the above estimate was made the contractor had urged his claim to an extra allowance on the excavation of the rock, on the ground that it was worth more than the contract price. In deliberating on this subject it was the opinion, both of the engineer and the undersigned, that if the contract had embraced the rock excavation alone, the job would have been a hard one for the contractor, and that an extra allowance beyond the contract price would have been just and equitable. But it was also the opinion of the engineer and the undersigned that the excavation and embankment on the job were of such a favorable character as would fully counter-balance the hardness of the rock; and that, on the whole, the contract was such a one as, in the hands of an ordinary contractor, would afford a reasonable indemnity for his time and expenses. And the undersigned still believes that this opinion was correct; and that, if the contractor was a looser on the job, it was not owing to the hardness of the contract, but, (in the language of the petitioner,) “to the negligent and intemperate habits of the man whom he had taken as a partner in the performance of the work.”

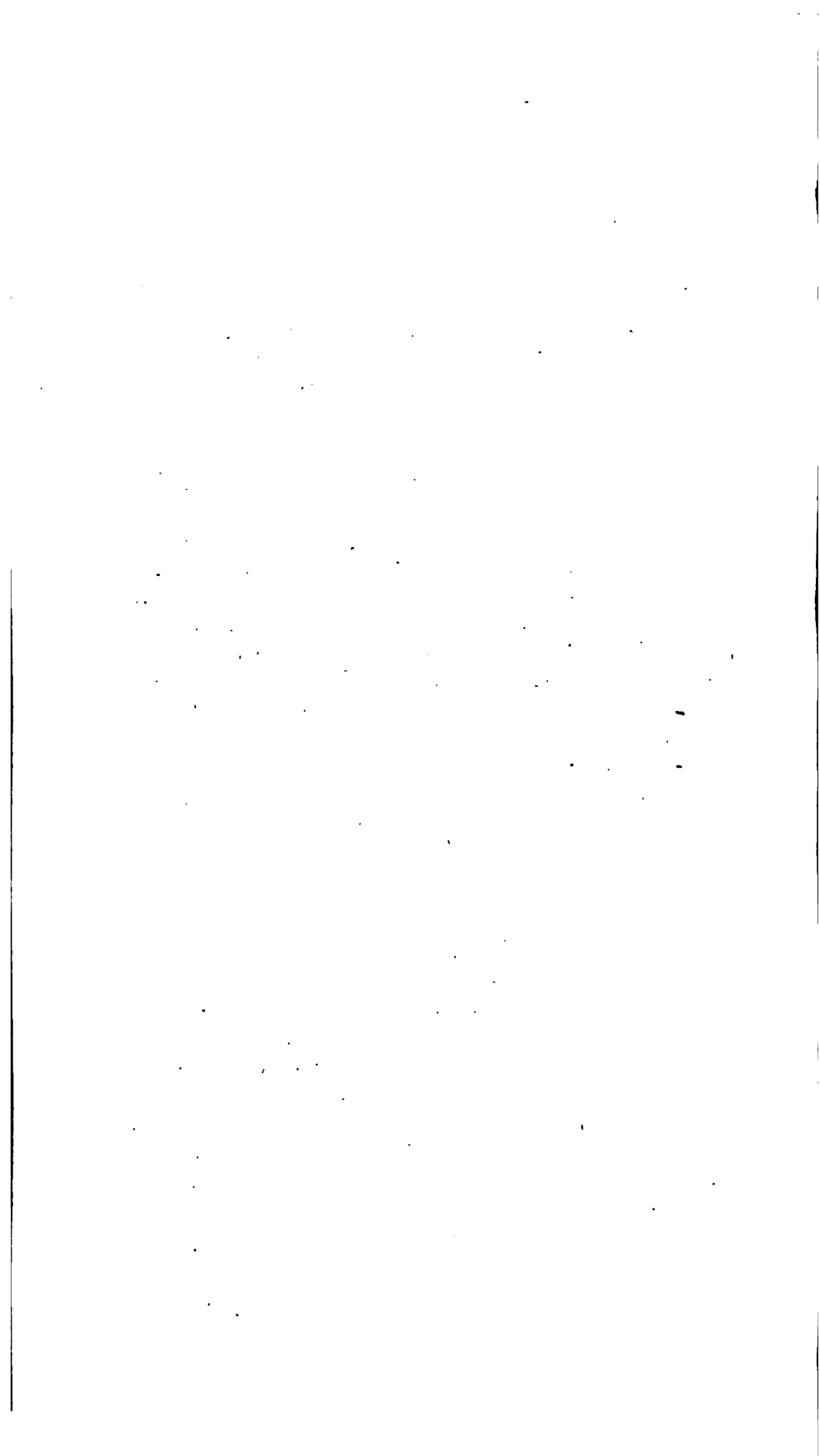
A reference to the contract, and to the estimate of the engineer, will shew that, in estimating the price of the rock, the engineer omitted the half cent, which is contained in the contract. This mistake was made known to the undersigned about two years ago, and he then informed the petitioner, Henry Thalhimier, that it would be rectified and the money paid to him, or to any one else who could give the proper receipt or voucher, as the executor or administrator of his father the contractor. The mistake is half a cent per yard, on 9,083 yards of rock excavation, amounting to \$45.41½. This sum will be paid by one of the acting Commissioners when called for by any one who can give the legal receipt.

Respectfully submitted,

S. YOUNG.

26th February, 1832.





**IN SENATE,**

**February 25, 1832.**

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**REPORT**

**Of the committee on the judiciary, on the bill for the relief of Elizabeth Idley, and the petition of John and Richard Downey.**

The committee on the judiciary, to which was referred the engrossed bill from the Assembly entitled "An act vesting the title of a certain lot in the city of New-York, escheated to the people of this State, in Elizabeth Idley, her heirs and assigns forever," and to which was also referred a memorial from John Downey and Richard Downey,

**REPORT :**

That from the petition of Mrs. Idley, as well as the petition of John and Richard Downey, it appears, that in 1803, Andrew Morris conveyed the lot in question to John Downey, the then husband of Mrs. Idley ; that he went into immediate possession thereof, and built a house thereon, and died in November, 1809, seised in fee of the lot of land.

John Downey, the owner of the lot, was a foreigner by birth, but was naturalized, as is alleged, previous to purchasing the lot in question.

His widow, Mrs. Idley, has remained in full possession of the premises in question since the time of his death in 1809, and now requests the Legislature to release to her the rights of the people acquired by escheat, in consequence of John Downey having now no issue or heirs capable of inheriting.

She represents, that for several years previous to the death of her husband he was in feeble health, and entirely unable to support himself, or to do any thing for a livelihood.

That she was a shop-keeper, and through her personal exertions acquired the means of purchasing the lot in question, and of supporting him and the family during his illness, and also of building the house on the premises.

That he was an unlearned man, and believed the lot would go to his wife on his decease, as he had no issue.

The house is burned down, and she wishes to dispose of the lot instead of rebuilding.

On the other hand, John and Richard Downey, whose petition has also been referred to your committee, represent that they are the sons of Terrence Downey, late of the city of New-York.

That Terrence Downey and John Downey the elder were cousins; that they came to this country together, and that Terrence Downey was the only relative of John Downey in this country; that Terrence Downey died in 1812, leaving the petitioners, John and Richard Downey, his children.

That Terrence Downey was naturalized previous to 1803, about the same time that John Downey was naturalized; and that as John Downey left no issue or heirs capable of inheriting, except Terrence Downey, the premises in question descended to him as heir at law on the death of John Downey.

They also represent, that until recently they supposed themselves lawful heirs of Terrence Downey, and under that impression John Downey, the petitioner, in December, 1830, filed his bill in chancery against Mrs. Idley and Richard Downey for partition of said lot; that to said bill Mrs. Idley pleaded that the said John and Richard Downey were not heirs at law of Terrence Downey, and in support of that plea, proved that Terrence Downey, before his marriage, or pretended marriage, with the mother of the said John and Richard, had married a woman in Philadelphia, who is yet living.

They allege that this was the first intimation they ever had that their father was not legally married to their mother.

That from their earliest recollections, their parents had lived together as man and wife, and had always represented themselves as such.

They also represent that John Downey, the petitioner, was named after John Downey deceased; and that the petitioners, John and Richard, are poor and destitute.

Under these circumstances, they object that the title to said lot be vested in Mrs. Idley, and request the interest of the State to be vested in them by act of the Legislature.

The committee have been unable to discover any sufficient cause or pretext for vesting in them the rights of the State.

If Terrence Downey was the cousin and heir at law of John Downey, deceased, and if the petitioners, John and Richard Downey, are lawful heirs of Terrence Downey, then the laws of the land afford ample remedy without legislative aid.

While on the other hand, if they are illegitimate, as is substantially conceded on their part, then they have no claim at law, and your committee can discover no equity in giving the property to them in preference to the widow, through whose exertions principally, the property is alleged to have been procured.

If related at all to John Downey, the relationship is remote, and if the question of legitimacy is laid out of view, affords no very conclusive reasons for preferring their claim.

Under all the circumstances, the committee recommend the passage of the law in favor of Mrs. Idley, unless a general law shall be passed in relation to escheats, which shall afford her adequate relief; and they report against the petitioners, John and Richard Downey.

LEVI BEARDSLEY, Ch'n.



**No. 58.**

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**IN SENATE,**

**February 27, 1832.**

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**REPORT**

**Of the select committee, on the petition of Daniel Richards, John Voorhis and John De Groot.**

The select committee, to whom was referred the petition of Daniel Richards, John Voorhis and John De Groot, praying to be incorporated by the name of the "New-York steam-boat company,"

**REPORT :**

That the petitioners state, that they and their associates hold a lease for Bull's ferry and Fort Lee, and will be necessarily obliged, in order to transact their business, and accommodate the public, to expend large sums of money.

This petition was presented to the Senate on the 10th of February instant, and as the ferries from the city of New-York are under the control of, and are granted by the corporation of that city, the committee have deemed it proper to ascertain upon what conditions the petitioners held their lease.

For this purpose a letter was addressed to the Comptroller, and his answer accompanies this report. From the letter of the Comptroller, it appears that instead of holding a lease of the ferry, as asserted by the petitioners, they were only petitioning the corporation for such lease.

It further appears, that on Monday, the 20th instant, ten days after the presentation of the petition to the Senate, a report was made by a committee of the board of aldermen, recommending a lease of Bull's ferry and Fort Lee, to Daniel Richards, John Voorhis, and

John De Groot, for the time of seven years, at a rent of one dollar per annum for the first three years, and one hundred dollars per annum for the remainder of the time. This report was not acted on, but laid on the table and ordered to be printed.

There is no certainty, therefore, that the petitioners will receive a lease of the ferry, as the subject must pass both branches of the common council, and receive the approval of the mayor before it is granted.

If a lease for the object stated however, should be obtained by the petitioners, there are still strong objections in the minds of the committee, to the granting of corporate powers for the purpose of conducting a ferry.

There are eight ferries from the city of New-York now in operation ; five from the east side of the city to Long Island, and three from the west side, running to different points on the shores of the State of New-Jersey.

Most of these ferries have incurred heavy expense in providing the necessary steam-boats, floats, and other erections for [their accommodation.

They usually employ two, and some of them three boats, in conveying passengers to and from the city, as well as the products of Long Island and New-Jersey to a market.

All these ferries are held under lease from the corporation of New-York, and some of them are joint stock companies; neither of them however, possess any corporate powers whatever.

In the instances alluded to, therefore, corporate powers have not been deemed necessary for conducting the business of a ferry, both with convenience to the public as well as profit to the lessees; and there is nothing to distinguish the one under consideration, from those alluded to, except that the distance from the several points of starting may be greater in the latter than in the former.

The committee consider it a sound general principle, that corporate powers ought not to be granted, to effect an object, while that object is, and can be successfully attained by the enterprise of individuals.

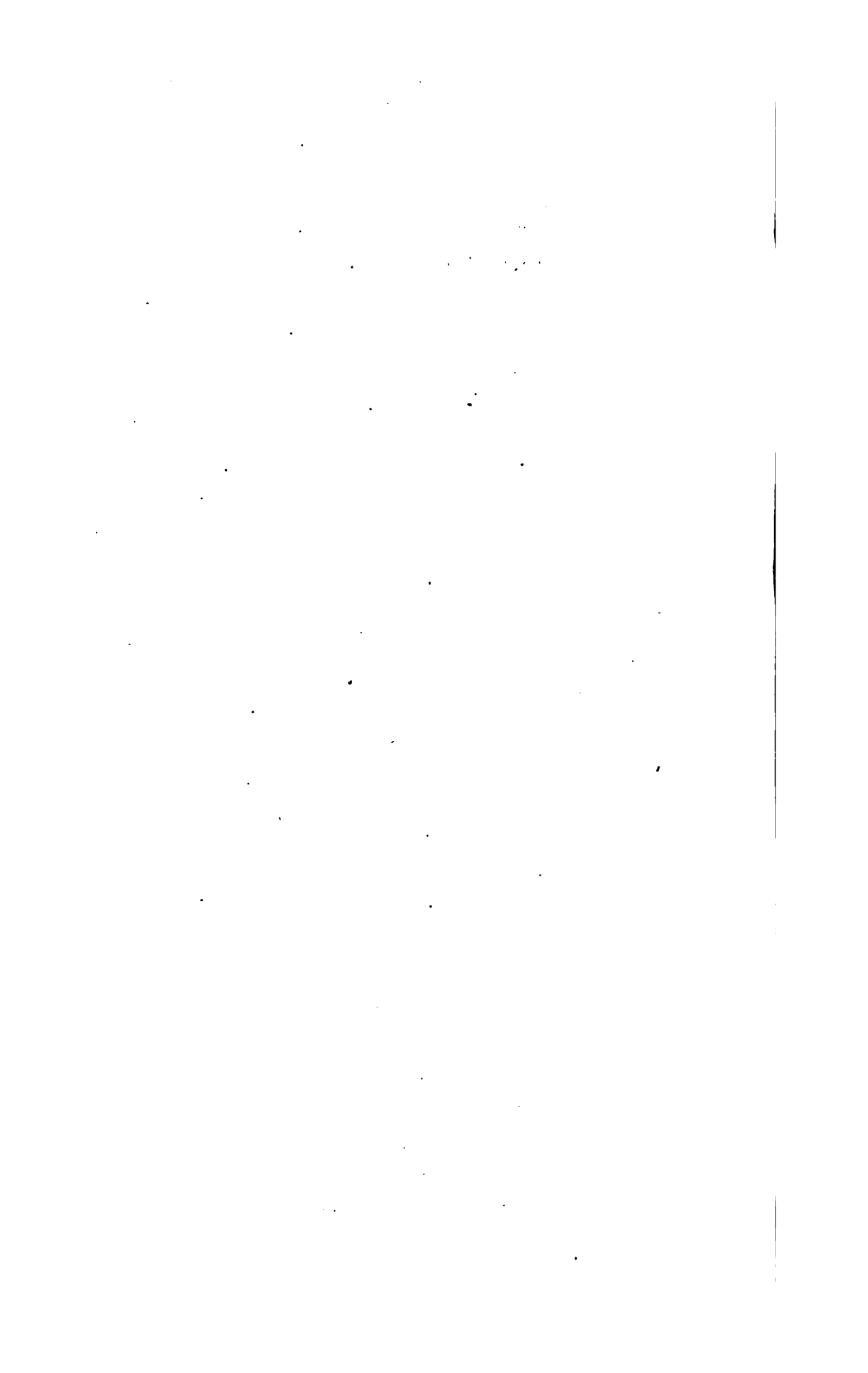
No. 58.]

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The committee therefore, report against the prayer of the petitioners, and accordingly introduce the following resolution :

*Resolved,* That the prayer of the petitioners ought not to be granted.





**No. 59.**

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**IN SENATE,**

**February 28, 1832.**

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**REMONSTRANCE**

**Of Edmond Charles Genet, on the claim of John Jacob Astor, to certain lands in the counties of Dutchess and Putnam.**

*To the Honorable the Legislature of the State of New-York, in Senate and Assembly convened.*

The petition of Edmond Charles Genet,

**RESPECTFULLY SHEWETH :**

That your petitioner deems it, once more, to be his duty, as a citizen of this State, to awaken, in behalf of the people, the attention of your honorable body on the alarming progress of the settlement of the pretended claim of John Jacob Astor, referred to the supreme court of the United States ; a claim which your petitioner, in a memorial presented by him to the last Legislature, has proved to be singly supported by two acts of the Legislature of this State, passed in 1827, and 1828, under the most palpable misrepresentations, mistakes and errors, as to the validity of the claimant's titles, and prerogative. It seems to be beyond doubt that the unfavorable effect of the acts aforesaid, having been extended to the evidence offered, at the last trials in the United States' circuit court, will produce the same result in the supreme court as on the first trials, and that we may soon expect a *mandamus* from the said court, to enforce the execution of the conditions of the said acts, the final settlement of which would not fall short of *six hundred thousand dollars*, including principal, interest and cost !

But your petitioner perseveres in the opinion, fully developed and illustrated, by unquestionable authorities, collected in his said memorial, on file in the Journals of the last session, that the two acts

[S. No. 59.]

above mentioned being unconstitutional as to the manner in which they were passed ; and being founded on mistakes, misrepresentations, and fraudulent conveyances, are binding neither under the revised constitution of this State, nor under the principles of law, as declared by the judges of the United States, in other causes, nor under a reciprocity of the rules of honor, disregarded by the claimant, in his statements, and averment as being a citizen of Jersey, &c. &c. The repeal of those unfortunate acts, *the lawful trophy of many years intrigue and management near the government of this State*, and the re-establishment of Mr. Astor in the situation in which he was, before they were passed, seem to be indispensable preliminaries to enable our own courts, and executive officers, to act in this portentous case, as the faithful gaurdians of the public purse, and the vested rights of the sovereign people of this State, so unaccountably overlooked in the acts aforesaid.

Various opinions and decisions of the United States' supreme court, reported in the memorial of your petitioner, evidently shew that such a measure would be in perfect accordance with the principles of law, held by that high court of judicature ; and as a civilian, your petitioner ventures, with confidence to say, that it is imperiously required. *In the first place*, by the principles of the common law, adopted by the people of this State, when they assumed the sovereignty and domainal prerogatives, previously held by the king and parliament of Great Britain ; *and in the second place*, by the principles of democracy, upon which this government is based ; which principles, among many other blessings, refuse even to the representatives of the people, the power to *arbitrate* on those sacred inherent rights, of which they are only the *trustees*. Your petitioner is very far from attributing to the supreme court of the United States, the ambitious policy of the popes and their cardinals, who in the times of ignorance and fanaticism, were always disposed to swell and extend their undefined jurisdiction, whenever any of the christian states, forgetting their dignity and their rights, tamely submitted to their spiritual tribunal, questions and causes which belonged to their own courts of justice. On the contrary, your petitioner has presented in his said memorial, various opinions of the federal judges, shewing their patriotic deference to the State laws, which in the present case they have rather carried too far ; and he verily believes that a firm resistance to the awards, which at the request or consent of this State, they have rendered, more as referees than as judges, on the exhibition of our own erroneous admissions, stipula-

tions and compromises, incompatible with a regular course of law, would exactly meet the opinion and decision delivered by that high tribunal, in the case of Elliot et alii, vs. Peirsal, Peters' Rep. vol. 15, page 340, "that when a court of law has jurisdiction of a matter, it has a right to decide any question which occurs in the cause, and whether its decisions be correct or otherwise, its judgments, until reversed, are regarded as binding. But if it acts without authority, its judgments and orders are regarded as nullities; they are not voidable, but simply void, and form no bar to a remedy sought in opposition to them, even prior to a reversal; they constitute no justification, and all persons concerned in executing such judgments, or sentence, are considered in law as trespassers." Here your petitioner demurs, and as in duty bound shall ever pray.

EDMOND CHARLES GENET.

*Prospect-Hill, town of Greenbush, }*  
*Rensselaer county, Feb. 25, 1832. }*



**No. 60.**

**IN SENATE,**

**February 29, 1832.**

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**REPORT**

**Of the committee on the judiciary, on the bill entitled "An act in addition to the act entitled 'An act to incorporate the Watertown water company.'"**

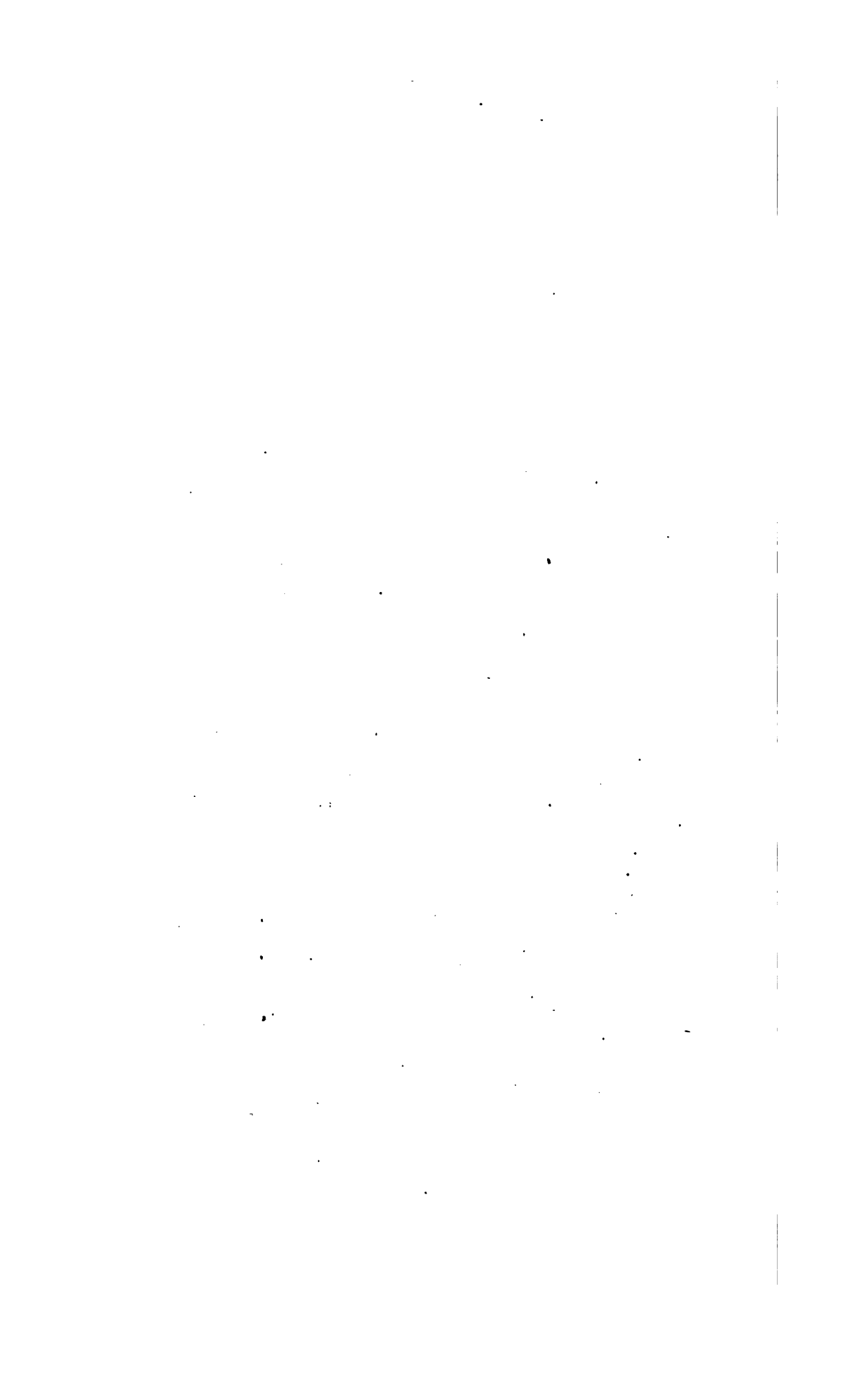
**Mr. Beardsley, from the committee on the judiciary, to which was referred an act entitled "An act in addition to the act entitled 'An act to incorporate the Watertown water company,'"**

**REPORTED :**

**That the Watertown water company was incorporated in 1826 ; and it is represented to the committee that subscriptions to the capital stock were made in the summer of that year, but the commissioners concluded not to collect the subscriptions and go into operation. It is represented that they are now desirous to go on and organize under the act of incorporation ; and the object of the bill referred to your committee, is to appoint a commissioner in the place of one who has died since the subscription, and to authorise the commissioners to collect the subscriptions and organize the company.**

**The bill has been introduced without petition, and without the publication of notices.**

**Your committee consider it a case where notice should be given, and report against the bill.**



No. 61.

## IN SENATE,

February 28, 1832.

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### REPORT

Of the committee on finance, on so much of the Governor's message as relates to the finances of the State, and the report of the Comptroller relative to loans.

Mr. Bronson, from the committee on finance, to whom was referred so much of his excellency the Governor's message as relates to the finances of the State, and to whom also was referred the report of the Comptroller relative to the loans of 1786, 1792 and 1808,

#### REPORTED :

That they have directed their attention to the various funds belonging to the government, and the revenues derived therefrom, with a view to ascertain their condition, and whether they were adequate to the accomplishment of their respective objects, and if not, to devise means to aid them.

They find the common school fund amounts to \$1,754,159.40, which will yield in revenue, according to the estimate of the Comptroller, \$96,350 annually; notwithstanding \$50,000 of this fund consists of stock in the Middle District bank, which has failed, and therefore yields no revenue.

This fund is therefore well invested, and is continually augmented by the sale of lands belonging to it.

In relation to the loans of 1786, 1792 and 1808, the committee propose to make them the subject of a separate report.



### THE CANAL FUND.

This fund is in a prosperous condition, and promises to afford ample means to defray the interest chargeable upon the canal stocks, and to yield a fund adequate to their redemption when due, and after this is effected to reimburse the General fund for all the contributions it may have made in aid of these works.

The total amount of the various canal stocks outstanding is 8,055,645 dollars and 86 cents, viz: \$5,112,145.86, charged with interest at the rate of five per cent, and \$2,943,500, charged with interest at the rate of six per cent, and redeemable at the following periods, viz: 5 per cents, \$1,395,500 00 1st July, 1837

|              |                |                  |      |
|--------------|----------------|------------------|------|
| "            | 2,662,035.86   | "                | 1845 |
| "            | 577,347 00     | "                | 1846 |
| "            | 87,000 00      | "                | 1849 |
| "            | 390,263 00     | 1st August, 1850 |      |
| <hr/>        |                |                  |      |
|              | \$5,112,145 86 |                  |      |
| 6 per cents, | 2,093,500 00   | 1st July, 1837   |      |
| "            | 850,000 00     | "                | 1845 |
| <hr/>        |                |                  |      |
| Total,.....  | \$8,055,645 86 |                  |      |

Funds applicable to the redemption of these stocks had accumulated in the hands of the Commissioners up to the 30th day of Sept. last, to the amount of \$2,218,229.41, and are vested as follows:

\$300,000 00 in stock issued to the Delaware and Hudson canal company, redeemable in the year 1847.

10,000 00 in stock issued to the Neversink navigation company, redeemable at the close of the year 1838.

100,000 00 stock issued for the construction of the Crooked lake canal, redeemable 1st Aug. 1850.

75,000 00 loaned to the city of Albany, payable 1836.

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\$385,000 00 at an interest of five per cent.

1,833,229 41 being the residue of this fund, is deposited in various banks, at an interest of from 3½ to 4½ per cent.

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\$2,218,229 41 Total.

There is a mutual stipulation in regard to that portion loaned at 4 and  $4\frac{1}{2}$  per cent, that it may be drawn or refunded at the option of either party, on giving the other sixty days' notice. In relation to that portion drawing  $3\frac{1}{2}$  per cent, it is deposited with two banks of this city, with a stipulation in favor of the Commissioners only, that they may draw at pleasure and at sight; these are called the depositing banks, and are obliged, by this temporary arrangement, to receive and hold, subject to such drafts, all the funds that cannot find other and better investment.

It is one of the laws governing the value of stocks, that those charged with a high rate of interest, increase in value in the same ratio that the period of redemption is postponed, while those charged with a low rate decrease in value in the ratio that the period of payment is remote. Assuming the rate of 4 per cent, therefore, as a standard rate of interest, and that a stock bearing such rate would bring its par value, neither commanding a premium or selling at a discount, then it follows that a stock drawing five per cent would command a premium high in proportion to the time the holder might be allowed to enjoy the extra interest, falling continually as the period for redemption approached; while a three per cent stock would be low in proportion to the period for which the holder must be compelled to receive the low rate of interest, rising in price as the period for redemption approached, the high and low interest stocks assimilating in value as they approach the period of redemption, when both must possess the same value, whatever their disparity might have been in the outset, allowing always for sudden fluctuations in the money market.

The canal stocks are charged with five and six per cent, redeemable 1837, 1845, 1846, 1849 and 1850; and if the committee were to assume that these stocks were worth on an average a premium of 15 per cent, that premium would amount to \$1,208,346.75, requiring to redeem the canal stocks at this time, \$9,264,090, provided the Commissioners held the funds for that purpose.

If the same addition be made to that portion of the funds in hand, applicable to this object, which have been invested in stocks, &c. at 5 per cent, being \$385,000, it would swell that fund by the amount of \$57,750, making the value of the fund for redemption amount to \$2,275,979 on the 30th September last; this amount deducted from the value of the stock outstanding, leaves \$6,988,112

as the present value of the public stocks beyond the means already provided for redemption.

The committee remark that  $15\frac{1}{100}$  per cent premium was obtained on the last five per cent stock, created July last, and redeemable in 1850. They also remark, that the Commissioners of the Canal Fund, in their report of February, 1825, estimated the canal debt to amount in 1826, when the canals should be completed, to \$7,693,736.72, and that ten years' revenue, provided it could be made to yield five per cent interest, would extinguish the debt.

New canals have augmented these stocks by the amount of about a million and a quarter of dollars, without, as the committee believe, a corresponding increase of revenue. It is now found, after a lapse of seven years, that the *value* of the debt beyond the amount of funds applicable to its redemption, falls but a trifle below seven millions of dollars. It is the actual, not nominal value of the debt, which ought to be considered, for we have received and expended the premium produced by the high rate of interest charged, and the distant day fixed for redemption, and we must refund this premium, or manage our funds in the best manner we may, until time shall have relieved us from it.

If the redemption of such stocks be provided for by the pledge of an ample fund, the interest regularly paid, and the government, whose faith is also pledged, be stable, free from embarrassment, and habitually punctual, then the stocks, having through these means acquired the confidence of foreign capitalists, will become marketable in foreign countries, and assimilate in price to the native stocks of such countries. To ascertain, therefore, the value of stock, and the influence of deferring payment, the value of money or rate of our own interest must not only be considered, but the rate of interest of commercial countries connected with ours by trade and intercourse; for it being known to the contractor for our stocks that he can either transfer them to foreigners at a price yielding a rate of interest below ours, or if he choose, can pledge them with foreign capitalists, to secure a loan at a like low rate, is induced to bid for such stocks according to their foreign price, or according to this low standard of interest.

Such is the reputation of New-York canal stocks, that they command the confidence of foreign capitalists, and afford them a favorite subject of investment, or satisfactory security for loans; hence

their high market value, and hence the difficulty which the Commissioners have found in all their attempts to invest the accumulating canal funds in these stocks. Add to this the very attempt to invest or purchase and cancel a large amount enhances their price beyond their intrinsic value, by increasing competition, thereby creating an artificial demand, which ceases only when the new competitor or State agent retires from market. Again, they had confidently hoped to be able to effect their object to some extent in consequence of the recent scarcity of money, which under any other circumstances would have depressed these stocks, but which, owing to the demand for subjects of remittance to England, which had produced the press upon the money market, actually raised the price of these stocks, as the pressure for money grew severe.

Little hope therefore remains that the Commissioners will be able to redeem the stocks before they shall become due, on terms that shall be favorable, or even admissible, and it seems desirable that the temporary arrangement alluded to should give place to more permanent ones, by means of which the funds which are already large and fast accumulating, may be made to yield the most revenue, be placed, as far as practicable, beyond the reach of accident, and at the same time be made available to meet the stock when the time for redemption shall have arrived, or when, by its near approach, the price may be reduced so much as to justify the purchase.

The management of this large fund, upon the present system, imposes great labor and responsibility upon the public officers who have it in charge. Banks can not pay its full value for such short and uncertain periods, and it is even doubtful whether the principal depositing banks can continue to receive these accumulated and fluctuating funds on the present terms: they must necessarily have idle funds to large amount to meet sudden calls, and they find by experience when money is plenty and not wanted by others, these funds accumulate with them, and when scarce, and of course valuable to them, they are suddenly withdrawn by applicants, who rejected them when money was more abundant.

Your committee, after much deliberation, have concluded to recommend that the Commissioners be invested with power to lend this fund, for long and definite periods, so arranging their loans that they shall be refunded at such periods, and in such amounts as will meet the payment of the various stocks, and they know of no repo-

sitory more safe, and possessing so amply the power to refund punctually, as the banks of our own State. The Commissioners ought, in the opinion of the committee, to have ample power to exercise their discretion, in contracting for terms, selecting the institutions and apportioning their several shares of the loan.

A better rate of interest would be obtained by this method, and the fund more widely dispersed over the country, so that, when to redeem the stock these loans are called in, it will not press heavily upon sections of country, but will press lightly upon all.

Although it is desirable to anticipate the public debt by payment, to relieve the public agents from the care of the fund, and at the same time place it beyond the reach of accident, still, as this can not be done, it is consoling to know that we can arrest this capital *in transitu* to its proprietors, a portion of them foreigners, and through the intervention of our corporate money lenders, and without an unreasonable risk confer a benefit upon the commerce and industry of our State.

#### GENERAL FUND.

This is the fund from which our government has, thus far, derived its support, and the policy of the State, until within a few years past, has been to require the income or revenue therefrom to perform this office, and whenever it was found inadequate to its performance, vigorous measures were resorted to for the purpose of sustaining it.

In October, 1814, a call was made by the Assembly upon the Comptroller for a statement of the General fund, together with the debts due from the State.

|   |                |
|---|----------------|
| The fund according to his report amounted to,.... | \$4,396,943 97 |
| The debts due from the State, to.....             | 1,503,683 00   |

|  |                       |
|--|-----------------------|
| Leaving the amount of the General fund, after deducting the debts chargeable upon it,..... | <u>\$2,893,260 97</u> |
|--|-----------------------|

In addition to which were 800,000 acres of unappropriated lands. The Comptroller estimated the annual revenue to be

|  |                           |
|--|---------------------------|
| derived from this fund at .....                      | \$318,232 13              |
| And ordinary expenses at.....                        | 352,796 10                |
| Leaving a deficiency to meet ordinary expenses, of.. | <u><u>\$34,563 97</u></u> |

To meet this deficiency, together with the extraordinary expenses, the Legislature passed a law imposing a tax of two mills upon the dollar of the valuation of the real and personal property within the State. The actual deficiency of revenue to meet ordinary and extraordinary expenses the following year was \$155,159.90, the tax not yet having become available.

A State tax has been levied and collected, varying from two mills to a half mill on the dollar, from 1816 to 1826, inclusive, comprising a period of eleven years in succession, which has produced to the general fund the aggregate amount of \$3,128,981.13, notwithstanding which the general fund has gradually declined until December 1st, 1830, when it amounted to \$1,344,268.65, and during the year 1831, again to the sum of \$1,131,026.5. If from this be deducted \$327,734.49, bad and doubtful items, \$802,291.62 will be the amount in solvent items; if 119,220.21, the amount due from this to the specific funds be deducted, then \$684,071.41 will be the present amount and value of the general fund, and estimated by the Comptroller to yield in revenue and collections of capital or principal, 112,100 dollars, while the current ordinary expenses are estimated at \$269,967.36, requiring to provide for the ordinary expenses of the coming year \$157,867.36.

If this general fund was not further diminished, it would yield annually, at 6 per cent, a revenue of \$41,044.28, and if the last year's disbursements be taken for an average of ordinary and extraordinary expenses, being \$343,521.31, then the annual deficiency would be \$302,477.03.

This hasty view of our finances has exposed the fact that our revenues for defraying the expenses of the government have failed; that the general fund is nearly exhausted, capable of yielding about \$40,000 per annum, only; and it has brought the committee to the important inquiry, how shall funds be provided to carry on the government?

Your committee are aware of but two projects which have presented themselves to the consideration of the people or their representatives; the one, *direct taxation*; the other, a resort to loans for both our expenses and the interest thereon.

From the fact that the Legislature have suffered the general fund to melt away year by year, under its burden, without an effort to re-

lieve it, and that too, notwithstanding the urgent and repeated recommendations of the Comptroller and their committees to repair it by tax, as well as from the tenor of the discussions had on this subject, there can be no doubt an opinion has obtained to some extent, that the fund ought to be wholly exhausted, and then a debt contracted which should look for its redemption to the public works at a distant period, when they shall have discharged the debt contracted for their construction.

The time has now arrived when indecision and delay must yield to action, when the purposes of government should appear through its legislation; and the committee propose to discuss this subject with all the care their time will allow and its importance demands.

*And first, in relation to exhausting the general fund.*

This is a fund derived principally from the sale of public domains, the common property of all; it has been transmitted to us, not as a legacy to be expended upon our own wants, but as a trust, to be carefully preserved, the avails or income thereof to be appropriated to our own use, and the capital to be again transmitted to our successors.

Nor ought this fund to be hazarded upon projects of doubtful utility, or indeed upon projects of any kind, under the belief that posterity may be more benefitted by, or better pleased with the project than they would have been with the capital expended in its accomplishment; the revenue is ours, that we have a right to expend; the capital is theirs, and we are bound to transmit it unimpaired, and in a condition to yield to them the same revenue which we have derived from it ourselves.

It has been said that the possession of such a fund stimulates cupidity, and induces applications and appropriations for unworthy objects, and therefore we ought to divest ourselves of it that we may be out of harm's way.

We have abundant evidence that other funds not more sacred in their character than this, are not invaded, whether constitutionally guarded or not; nor can the committee persuade themselves that the funds appropriated to education, to the payment of public debts, the security of the currency and the bill holders, require to be guarded

more scrupulously, than the fund that has been derived from our predecessors, the avails of a common estate, and destined to perform a duty as important as sacred as any other fund, the duty of sustaining and carrying on our government.

While the committee are opposed to the policy which has exhausted and which continues to exhaust the general fund, they are equally opposed to that of incurring debts which look to the canal revenues for redemption, after these revenues shall have been relieved from the canal stocks, and their interest. It is the policy of expending the patrimony derived from our ancestors, and having done so, then transmit to posterity the burden of sustaining our civil institutions, thus ridding ourselves of all burdens.

They object to the creation of a debt to be redeemed by our public canals, or other works, for the following reasons:

- 1st. Because it is unjust:
- 2d. Because it is imprudent: and,
- 3d. Because public works are not legitimate subjects of revenue.

And, *First*. If it be just to postpone the payment of our current expenses in order to charge them at a future period, (when the canal debt is paid,) upon our public works, then it will be equally just, when that period arrives, to charge upon the same source the support of the government thereafter; such a proposition, therefore, involves the declaration that we intend, for all time to come, to support our government from the income of our canals.

If ten years be assumed as the period when the canal stocks will be redeemed, or a sufficient fund accumulated for their redemption, and 300,000 dollars as the current annual expenses of our government, beyond the ability of the General fund to discharge, this amount borrowed annually, together with the interest thereon, computed at five per cent, will have amounted to about four millions of dollars at the end of the year 1841. The committee, however, believe this estimate much too low, no allowance having been made to repair the annual deficiency in the revenues of the Oswego, and the Seneca and Cayuga canals, which fall short of their annual expenses, or those of the Chemung and Crooked-lake canals, which it is believed will in like manner require aid from other sources than themselves, nor to redeem the stock issued by the State for the Neversink navigation, the security for which having failed, the



stock must be redeemed by the State. Nor has the pending claim of Mr. Astor, or the accumulating business of the government, and the growing demands upon the treasury been taken into the account. It is believed, therefore, to be more prudent to estimate the debt at the end of the year 1841, at six millions of dollars.

It cannot be just to suffer such a debt to accumulate; if in the end it were to be assessed in such manner as to equalize the burden on all, we have not the apology of necessity to urge for such postponement. This debt will not have been incurred in defending the country, in which case our successors might be required to share it with us. It will be a debt incurred in a period of profound peace and great prosperity, and has no other or better apology for its creation, than the desire and the power to transfer our burdens to our successors.

Neither is it wise, in a government constituted like ours, where the tax payors are themselves the assessors, to hazard experiments to ascertain how much and how long they will endure. In the language of the Executive, in the document under consideration, "It has never yet been determined by the representatives of a free people, what extent of moral obligation rests upon them to provide for the discharge of a debt forwarded on for payment by their predecessors in power."

It is still more unjust to impose this burden upon the commerce of our canals, by doing which, a portion only of the community, and those trading on and connected with our canals, would bear it.

The operation of this system of finance would be, first, to impose upon the public works the price of their construction, being for those already authorised, some twelve millions of dollars, which is just and equitable; and then deliberately to run up a debt of five or six millions more, being the price of ten years' support of our government, and impose it upon the canals at the exact period when they shall have relieved themselves from the burden of construction. Nor is this all, for at the period contemplated is to be super-added to this new burden that of sustaining in future the current expenses of the government, or its deficiency beyond the ability of the General fund to pay; and the revenue required for this last purpose, would in our opinion be equal to the interest at five per cent, on a capital of eight millions of dollars. And thus would your canals, after relieving themselves of the cost of construction, say twelve millions, and eight or ten millions of interest besides, be

subjected to a new burden, greater than the one with which they started fifteen years before, viz: a burden of thirteen or fourteen millions, and one too which can never be liquidated or discharged, so long as the government and the canals may endure; for when one hundred millions shall have been paid, the reasons for pressing upon this source for another hundred will be as cogent as valid, and as just, as at the outset. To expose this glaring injustice, it is only necessary to add, that the plan contemplates from this time forward to support the government by a tax on that portion of our commerce which borders our canals and passes on them, and to relieve all other portions of the State from future contributions. If it be urged that the General fund, or the common resources of the State have contributed to these works, and hence they in their turn should contribute to this fund, the committee reply, that so far as these resources have been drawn upon, it is just and right that the canals should refund; and they wish to be distinctly understood as recommending such retribution, and as objecting strenuously to any policy which should eventually relieve the commerce of the canals from any portion of the cost of construction, and levy that portion upon the whole community; they would have the amount of this contribution carefully estimated and levied upon the canals, and require them to refund the capital to the General fund, or contribute to it annually, in a sum equal to the interest on such capital, so soon as the constitutional inhibition is removed by the payment of the canal debt.

They do not deem it necessary to institute a minute examination for the purpose of ascertaining the amount already contributed by the General fund to the canals, or its probable amount in 1841: it is principles they wish to settle, not details; they will add, however, that in 1839 the vendue duty had amounted to....

|                      |                       |
|----------------------|-----------------------|
| \$2,257,449 64       |                       |
| Salt duty,.....      | 1,054,758 86          |
| Steam-boat tax,..... | 73,509 99             |
| Sales of land,.....  | 67,835 50             |
| Total,.....          | <u>\$3,453,553 99</u> |

It is uncertain how long the salt and auction duties may be allowed to yield their accustomed revenue, nor is it easy to ascertain what portion of the above revenue ought to be credited to the General fund, and what portion to the canal itself. A large portion of the salt duty is paid by neighboring States, favored in its transit, and

greatly extended by means of our canals; of that portion consumed by our own citizens much of it returns to the consumer the amount of duty paid, by means of cheapened transportation through our canals; but a small portion of this salt revenue, therefore, belongs to the General fund.

A portion of our auction duties also owe their existence to our canals, the goods which paid them having been introduced to neighboring States and provinces through our auction rooms and our canals.

If the revenue which may have been diverted from the General fund should be estimated to amount, at the end of the year 1841, to five millions of dollars, and the canal revenues should have realized the hopes of the committee, by discharging their debts, then the State would have in this work a resource, applicable to current expenses, of 5 millions of dollars, or an annual revenue equal to its interest, say \$250,000.

If it be objected, that our claims in behalf of the General fund are postponed to a distant day, we answer, that we have already indemnified ourselves for this delay, (imprudently and improperly, as the committee believe,) by expending more than two millions of the capital of the General fund.

*2nd. It is improvident to rely on our canals to discharge, at a future day, the expenses of the present.*

And first, because this revenue may fail, and that too after the debt to be charged upon it has greatly accumulated. This revenue may be exhausted by improvident public works; it is found that none of the public works have yet yielded revenue equal to their cost and expenses, except the Erie canal. The Champlain, the Oswego, the Seneca and Cayuga have all fallen short of this object, and notwithstanding this result, and notwithstanding too that these three canals are highly favored in location, and are easy of construction, connecting by their means extensive natural navigation with themselves and with the Erie canal; still, in the face of this experience, other canals, less favored in location and more difficult of construction have been undertaken, others again are pressed upon the State, not possessing the advantage even of the prospect of revenue.

There is, therefore, much reason to fear, if not to believe, that long ere the ten years have expired, in which this debt is to accumulate, the future revenues of the Erie canal will have been forestalled by improvident public works.

Again : It is known that our southern neighbors in Pennsylvania and Maryland, and our northern neighbors, the Canadians, are making unparalleled efforts, both public and private, to divert through their States and provinces, and to their markets, by means of canals and rail-roads, the trade of the valley of the Ohio. Trade, not revenue, seems to have been with them a controlling object; their projects are avowedly based upon the principle of rivalling the State of New-York in this western trade, and it is quite certain this object will not be lost sight of, however low it may force their tolls and their revenue, and under this competition our revenues may vanish, while our debts are accumulating.

But, finally, should our State, against all probability, wisely husband its canal resources, by rejecting all improvident expenditures for public works, and should the rivalry of the south and the north leave our present works unharmed, still there remains in the minds of the committee another formidable objection to throwing upon the canal sections this accumulated and interminable burden, which is a settled conviction, a firm belief that they will not consent to pay it, but will require its re-assessment upon the whole State. Startling and perhaps new as this proposition may be to some, yet a little reflection, it is believed, will carry conviction to the minds of all, that this result may and probably will happen.

This imposition will be felt to be partial, unjust and oppressive, and this feeling will most naturally produce a trial of strength, constitutionally exerted, between those on whom the expenses of the government are sought to be levied, and those by whom it is levied, or between those who are called upon to pay all and those disposed to pay nothing. The canal sections, therefore, will be arrayed on this question against the rest of the State, and to predict the result, it only remains to decide on their relative strength.

If we consider that 500 miles of our State are already penetrated by these canals, that others, to a great extent, may be added, that the canal sections are populous, and fast populating, that our commercial cities, which receive from these channels their support and sustenance, will array themselves on the side of the canals, there

can be little doubt of the result, and there is reason to fear that, in the state of feeling which would be produced by this collision, the dominant party might not stop at the point of exact and equal justice, and might even refuse to refund the amount which had been drawn from the public resources for these works.

*3d. Public works are not legitimate subjects of revenue.*

If it be true, that governments have the skill to construct public works, which shall at once promote commerce, and yield revenue to the State; if government has only to borrow money from her citizens, invest it in canals, and by skilful management refund the money and interest to her citizens, and lay by revenue for public use, and this without inflicting injury upon commerce or her citizens, then indeed have we fallen upon a new era in the science of government, and our State is entitled to the honor of the discovery. If this be so, then for all time to come, taxes will vanish, government has only to pledge its credit, borrow money, and grow rich.

Whilst in a government like ours, which is emphatically a government of opinions, it is all important that erroneous ones, if they exist, should be corrected; still the committee feel sensibly the responsibility of questioning the correctness of such as have been recognized by the people, or sanctioned by their representatives.

They believe however, that the two objects of promoting commerce and providing revenue by constructing canals are incompatible with each other, and ought not to be combined. When the interest of commerce is sought, revenue is abandoned; when revenue is sought, commerce is neglected, if not paralyzed.

If revenue be laid out of the question, and the interest of commerce alone considered, then a tax should be imposed upon the commodities passing on a canal or road sufficient to yield a fair return for capital, or such an imposition as would in due time reimburse the outlay, interest, and labor of management; and the more accurately this can be adjusted between payor and receiver, whoever the parties may be, the more equitable the adjustment. If the parties are all citizens unconnected with government, then the conflicting interest of the payor and receiver, the public who use the canal on the one hand, and the proprietor, who levies the toll on the other, balance each other, and with the Legislature for an umpire, will be adjusted to the advantage of all. If, however, the taxing and re-

ceiving party be the government, and they desire to derive revenue beyond the cost, interest, and superintending, then there is no umpire, no third party to appeal to, and the amount of tax will be subject to no rule, restrained by no limit, other than the wants of the government, and the ability of commerce to bear imposition.

Another objection to this combined scheme of commerce and revenue is, that its burdensome exactions must be sustained by *monopoly* on the part of the government, interdicting to her citizens the privilege of constructing with their own funds works that may rival those of the public, and impair their revenues; and few works can be projected to which fear and ingenuity may not ascribe a rival tendency. Hence we find most of the applications made to the Legislature for the privilege to create local facilities with private funds are met with this objection, and it promises even now to defeat numerous projects, and among them one of equal magnitude with the Erie canal; that such monopoly may be necessary for purposes of revenue the committee admit, but they deny the justice or policy of creating monopolies with a view to revenue.

Had this doctrine of monopoly been avowed at the commencement of these works, would it have been tolerated? The avowal would have been in substance as follows: "If you, the people, will undertake these works, allow yourselves to be taxed, &c. when accomplished you will be permitted to transport your commodities on them by paying double, treble, or quadruple the cost of them, but you will be inhibited forever after from expending your own money to procure for yourselves other commercial facilities;" could the public with this view have been enlisted in a project so fatal to their future enterprise, and so blighting to their commercial interest?

But the committee believe there is a defect in this system, still deeper and more fatal than those they have exposed; which is found in the organization of governments, and in the constitution of human nature, in which exist principles at war with the successful and gainful prosecution of enterprises of this kind by the public.

It is a maxim with the committee that *governmental management* and *mismanagement* are synonymous terms, when that management is applied to commercial enterprises of any kind, as rail-roads, canals, manufacturing, agriculture or banking, in short any enterprise which has revenue for its object, by the employment and manage-

ment of capital, whether public or private. They believe that *self interest*, that principle which is among the best and wisest of nature's laws, guiding and controlling individual enterprise and skill, is alone competent to undertake and carry out to a successful issue, any and all enterprises which have gain for their object.

The bare allusion to the process by which a public enterprise is conducted will establish the truth of their maxim. The whole community select, by means of a numerous agency, (the Legislature,) a subject of investment, say a canal or rail-road, or what is more common, a subject is imposed upon their agents by a small number of interested citizens, who will not themselves undertake the proffered enterprise. Money is then borrowed from our citizens, to be expended in the best manner it may, by means of powers delegated and redelegated down to the deputy agent's assistant, *an agent very far removed from a very careless principal*. The revenues derived from the work are managed in the same thriftless manner; the money and interest being restored to the lender, the profit or surplus revenue, if any, inures to the proprietors of the enterprise, the whole population.

The individual, or association of individuals, select their subject of investment with a single eye to gain; they apply with great skill, sharpened by interest, the only legitimate test of its utility, which is, *does commerce call for this work? or, in other words, will the commerce of the region bear the tax required for its construction?* Nor are they influenced by friendship, gratitude for past, or hope of future favors, pledges, promises, easy good nature, party politics, or the thousand motives, (most of them amiable) which may influence a legislator.

The individual disregards, likewise, all considerations of incidental advantage to the country; still these advantages flow from his enterprise in a stream more ample and broad than from that of the government, inasmuch as his expenditure being less, and his revenues better managed, a lighter tax on commerce remunerates him; nor does he ask or expect the monopoly of an extensive region to sustain his work.

It is individual skill alone, stimulated by the same strong motive to human action, which is found able to meet and match like skill, like selfishness, and maintain an equal conflict of interest throughout the enterprise, a conflict which applies to every purchase, every

contract, every trespass or claim for damage, and every day's labor; a conflict to which the whole people, the combined power and wisdom of the State is wholly unequal, over-matched by the humblest citizen.

If government should undertake, by the same process, to cultivate a farm, they might dignify it as they would by "*combined effort, developing the resources of the State, concentrating the wisdom of the nation to promote agriculture,*" &c. still it would be simple farming, of the most thriftless kind; and revenue could only be extorted from it as it must, and always has been by governments from business projects, by monopoly; in the case of the farm, by inhibiting to other farmers the vending of the kind of products yielded by the public farm.

Temporary or accidental success in a public enterprise is fraught with danger and ultimate disappointment; while individuals hoard their gains, and often grow parsimonious as they accumulate, governments grow lavish as they grow rich, wanting that exclusive, that all-engrossing propensity possessed by individuals, which alone can guard effectually what has been earned so hardly; the gains which government have been able to extort by monopoly from one section of country, they are sure to lavish prodigally upon another, and call it an equal distribution of public bounty.

Again—the dangerous and delusive notions of incidental benefits, State enterprise, monuments of art, munificent government, national glory, &c. mix themselves up with this finance scheme.

When such considerations control and direct the people in their public works, they have no safe guide; they are drifting at random without pilot, chart, or compass. Monuments they will erect, but they may be monuments of folly; all the glory resolves itself into the *utility* of the work, and humiliating as it may be to national pride, this utility can best be ascertained by applying the humble, the sordid test of profit and loss, of pounds, shillings and pence.—If it will bear this vulgar test applied by a skilful and selfish hand, then it will prove a monument of wisdom and glory, because a monument of utility. If it will not bear this test, it will only prove like those of Egypt, a monument of power and folly.

The committee do not feel themselves called upon to discuss the question, whether the interest of commerce is best consulted by  
[S. No. 61.]



public or private improvements; by works conducted by governments or individuals, except incidentally, as connected with the subject of revenue, but they are aware that all their reasoning favors the private or individual enterprise.

If, therefore, it be asked whether the commerce of the country ought to be subjected to the exactions of private cupidity, of individual avarice, they answer, if the individual is not restrained in his exactions upon commerce for a given improvement below the rate or amount which the government would require for the same improvement, it must be the fault, the neglect of those on whom the exaction is levied, or of the government which legalized it; it being apparent from his superior skill in managing his disbursements and his revenues, that a less amount of toll or tax will remunerate, if not satisfy him, than that which the government must demand. It is a matter of conflicting interest for mutual adjustment, between the capitalist who proffers his money on the one hand, and the proprietors of the country or district who are to pay for its use in the form of tolls on the other. It is to be settled upon the principle of give and take, purchase and sale, or exchange of equivalents, and may safely be left to the parties themselves under the arbitrament of a wise and just government, a government that shall take care to make private interest and public good harmonize, giving to no individual or association of individuals, a grant of powers so exorbitant, or a field of operations so broad and extended as to enable them to repress or destroy rival enterprises, or to control and tyrannize over the government itself which made the grant.

The committee will barely glance at some of the prominent arguments in favor of taxing the canals for revenue.

And one is, that they enhance the value of lands and products in their regions, while lands and products remote are by their means depressed in value; and

Again—that our principal canals from their location draw through their channels the trade of neighboring States and Provinces, thus deriving a portion of these contributions from strangers beyond our borders.

The committee again assume what they hope they have made pretty apparent, that canals are made for commerce, and not commerce for canals; that the interest of commerce is paramount to all

others ; that having discharged the debt which it had induced to create canals, commerce should not be made to suffer for the incidental advantages which the canal has conferred on the adjacent country ; these advantages are the result of location, a location so favored by nature, that by the application of a given sum of money, a road or an artificial river may be created which, after enduring a few years burthen, may become comparatively free forever.

If its situation in relation to States and territories beyond will enable a district to throw part of the burdens of these works upon others, its location is still more fortunate ; its commerce may be relieved by the exact amount charged on those more remote regions. Such advantages, with an easy and cheap route for a canal, assimilate such country in location to the banks of a natural and navigable river, all these advantages belong of right to its location ; they are the work of nature, requiring at the hand of art a small contribution to realize them. If this be not so, how far may the system of imposition be carried, and where shall it cease. If the simple rule laid down by the committee, viz, to tax the commerce for the cost of the work only be disregarded, there would seem to be no other stopping point until all the advantages of location, soil and climate are taxed away from the canal regions, and conferred upon others less favored by nature, or, until all advantages of location, soil, &c. are equalized by taxation. Here too does the rival objects of commerce and revenue conflict with each other, for the stream of commerce flowing through our channels from abroad will be ample or stinted, in the exact ratio that our impositions are light or heavy.

That our canals depress the value of real estate in regions remote from them, is a proposition to which the committee do not assent. That they may, like all improvements, produce a change in the pursuits and industry of the country, must be conceded, and this change may for a time be embarrassing ; it may convert a wheat-growing to a grazing country, and a forest to a wheat-growing country. A canal improvement, like a labor-saving machine, may derange industry, and perhaps ruin individuals, but benefits never fail to result to the public from both. It can hardly be believed, that if the river counties were to consult their interest alone they would wish again to annihilate the canals, restore the forests of the north and west, and despoil New-York of half her population, provided they were neither to be called upon to contribute to these works or allowed to participate in their revenues.

If it were otherwise, and an improvement should elevate one section of country and depress another, still no good government would repress such improvement, or attempt by legislation and tax to equalize its benefits. It ought only to interpose its authority to protect the injured section from the imposition of a tax for the purpose of inflicting the injury.

If the evils of creating and postponing a public debt be not imaginary; if the advantages of freeing our canals from monopoly, and restoring to our citizens the right to better their condition, by the application of their private funds; if to sustain the canal revenues in a condition that will enable us to compete with all the world for the trade of the Ohio, and finally to draw on these revenues for four or five millions of dollars for public purposes, be objects worthy the consideration of the Legislature, then are we admonished to discharge our current expenses, guard these revenues with care, and resist all improvident expenditures for future improvements.

The committee therefore recommend authorising a tax of one mill upon the dollar of the taxable property of the State, as being the smallest sum which will suffice to carry on the government; and they entertain the hope that the prosperous condition of the country may increase the subject of taxation in a ratio equal to the increasing expenses of the government, until the period when the canals will be able to restore the contributions drawn from the General fund.

The returns of all the counties except Dutchess and Sullivan, give an aggregate valuation of real and personal property of \$347,062,711. It is estimated, therefore, that such tax will yield, after deducting expenses of collection, for the first year, the sum of \$350,000. The committee ask leave to present a bill.

All which is respectfully submitted.

ALVIN BRONSON,  
*Chairman.*

No. 62.

## IN SENATE,

March 1, 1832.

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### REPORT

**Of the committee on finance, on the petition of sundry inhabitants of the county of Clinton.**

The committee on finance, to which was referred the petition of sundry inhabitants of the county of Clinton,

#### REPORT :

That the petitioners ask for an appropriation of *three thousand dollars* of the public monies, to complete a road already commenced and partly finished, from the Redford glass works in military township number four in the town of Saranac and county of Clinton, to intersect the Port Kent and Hopkinton road in number ten in the county of Franklin, being a distance of about fourteen miles ; and is a portion of the road which, branching from the Port Kent and Hopkinton road at number ten as above in Franklin, reaches Lake Champlain at Plattsburgh, and is in all about forty miles in length, as appears from the map exhibited to the committee. The western and unfinished part of this road runs entirely over School fund lands ; which, in the opinion of the committee, as well as that of the Superintendent of Common Schools, expressed in his last annual report, will greatly enhance the value of these lands. The road has already given existence to an extensive glass manufactory, and the growing village of Redford, remote from other settlements.

By an act of the Legislature, session 1830, chapter 261, five thousand dollars were loaned to the county of Clinton by the State, at an interest of six per cent. This sum, together with about one thousand dollars raised by individual contribution, have been expended on, and have completed the road to the glass works at the village of Redford, a distance of about twenty-five miles from Plattsburgh.

[S. No. 62.]

Although the State has made bountiful grants to Clinton and the neighbouring counties for roads, still the inhabitants have been liberal and spirited, it is believed, beyond any other counties, and have taxed themselves more heavily for this object ; and it appears to the committee to be just and equitable that the people of the State should unite with these enterprising citizens, and aid in the completion of their valuable roads, in proportion to the public interest in lands near them.

The committee have ascertained that lots numbers 11, 22, 31, 35, 59, 72, 88 and 90, in township number four, laying on and near the unfinished part of this road, containing about five thousand acres, have escheated to the State, by the death of John G. Leake. And the committee recommend an appropriation from their avails, of three thousand dollars, toward the completion of the road in question ; believing, from the information derived from the Superintendent of Common Schools, who has explored them, that these and other School fund lands in townships numbers nine and ten in their neighbourhood, will be benefited beyond the amount of the sum which they propose to appropriate. They therefore ask leave to introduce a bill, which has been prepared for them for this purpose.

All which is respectfully submitted,

ALVIN BRONSON,

*Chairman.*

**No. 63.**

**IN SENATE,**

**February 29, 1832.**

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**REPORT**

**Of the committee on the Judiciary, against the petition for a law authorising the appointment of a supreme court commissioner at Whitesboro'.**

The committee on the Judiciary, to which was referred a petition for a law authorising the appointment of a supreme court commissioner, to reside in the village of Whitesboro',

**REPORT:**

That in the city of Utica, about three miles from Whitesboro', there is a circuit judge, judge of the court of common pleas of the degree of counsel, and a supreme court commissioner.

It has heretofore been considered an object to hold out some little inducements to competent professional men to act as judges of the county courts, and on this account, as well as others, the Legislature have deemed it impolitic to increase the number of supreme court commissioners, except where the public convenience imperiously requires it.

In business villages situated ten, fifteen or twenty miles from an officer authorised to perform these duties, there would be a much greater propriety in authorising the appointment of a commissioner, than in a village situated as Whitesboro' is.

The committee are of opinion, that to comply with the request of the petitioners would be carrying the principle to an unreasonable and impolitic extent, and therefore report against the prayer of the petitioners.

**LEVI BEARDSLEY.**



**No. 64.**

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**IN SENATE,**

**March 1, 1832.**

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**REPORT**

**Of the Canal Board, in answer to a resolution of the Honorable the Senate, accompanying the reference to the said Board of the Act to incorporate the Oneida Lake Canal Company.**

The Canal Board, to whom was referred by the Honorable the Senate, the bill to incorporate the Oneida Lake Canal Company, with the following resolution :

*“ Resolved, That the Canal Board, to which has been referred the bill for the construction of the canal from the Erie canal to the Oneida lake, report to the Senate their opinion of the utility of the contemplated improvement, and whether it would be most promotive of the interests of the State, that the said improvement should be made by the State, or by an incorporated company ; and also that the said Board report whether, in their opinion, it will at any time be necessary or expedient to use the Oneida creek as a feeder to the Erie canal, and whether there is any difficulty in taking the said creek into the said canal :”*

**RESPECTFULLY REPORT :**

The Oneida creek passes under the Erie canal, about forty miles from the east, and about twenty-nine miles from the west, end of the long level. The principal feeders for this level are the Butternut creek, the Limestone creek, the Chittenango creek, the Cowassalon creek, the Wood creek, and the Mohawk river. Besides these there are several small and unimportant feeders, such as Pool's brook, the Canistota creek, Dunn's creek, and French's creek. The Butternut, Limestone, Chittenango and Cowassalon, are west, and the Wood creek and Mohawk river east of the Oneida creek.



If any want of water should be experienced upon this level, it would probably be east, and not west of the Oneida creek. The Butternut, Limestone and Chittenango, are important feeders, affording large quantities of water at all times. The Cowassalon is a small stream, two miles west of the Oneida creek. It is important as a feeder, by reason of the regularity of its supply of water to the canal. Wood creek does not afford a large supply of water in dry weather. The Mohawk is a large stream. The whole of its waters at Rome have been appropriated, and can be used to feed the canal when necessary. The Mohawk is taken into the canal about sixteen miles east of the Oneida creek, and about twenty-four miles west of the eastern termination of the level. If there should at any time be a deficiency of water for this level, it *probably* would be east of Rome. It is believed that as much water can at all times be drawn from the Mohawk, as will be required to fill the canal at that place. If this belief is well founded, taking in an additional feeder west, would not afford any greater supply of water for the eastern end of the level. Using the Oneida creek as a feeder would not be injurious to the canal, and might be beneficial, in case any accident should occur to prevent a supply from the feeders that are now used. But the Canal Board cannot say that, for purposes of navigation, it will, in their opinion, at any time be necessary or expedient to use the Oneida creek as a feeder to the Erie canal.

The Canal Board are of opinion that there is not any difficulty in taking the Oneida creek into the canal. They understand that about three miles up the creek from the canal, it is upon a level sufficiently high to admit of its waters being conveyed into the canal. They are not in possession of facts to warrant them in estimating the expense. The contemplated canal will be from four to eight miles in length. The length depends upon the place which shall be designated for its construction. There is, from the Erie canal to the Oneida lake, a descent of about fifty-six feet. This descent will have to be overcome by locks. The expense of locks, if built of stone, will be about forty-four thousand eight hundred dollars; if built of wood, probably about twelve thousand six hundred dollars. The making of say six miles of canal, about twenty-four thousand dollars. The cost of the canal, according to this estimate, would be, if the locks are of stone, sixty-eight thousand eight hundred dollars; if of wood, thirty-six thousand six hundred dollars, without any allowance for damages.

Constructing a navigable communication between the Oneida lake and the Erie canal, would unquestionably be useful to a large number of inhabitants residing near the lake, by giving them advantages that they do not now possess, of conveying the productions of their soil to market. It might be useful to the State, by bringing property on to the Erie canal, which, without such communication, would never reach it. But when the Canal Board are called upon to report, "whether, in their opinion, it would be most promotive of the interests of the State, that the contemplated improvement should be made by the State, or by an incorporated company," they consider it their duty to report with reference to the probable amount of tolls that would be derived from the canal if made. Taking this view of the subject, and judging of the probable amount of tolls that would be received from this canal, by the amount that the State has received from the lateral canals already constructed, they are compelled to say, that in their opinion, it would be more promotive of the interests of the State, that the contemplated improvement should be made by an incorporated company, than by the State.

If an incorporated company should be authorised to construct the Oneida Lake canal, they should, in the opinion of the Canal Board, be required to build a permanent lock, of stone, at the place where they connect with the Erie canal. This lock should have tight and secure gates, so as not to admit of the passage of any more water from the Erie canal than the company should be authorised to draw; and as an additional security, the lock should be placed under the control of the officers of the State having charge of that part of the Erie canal.

An objection to the construction of the contemplated canal is the want of water to feed it. Unless this objection can be removed, it appears to the Canal Board that it would be useless to authorise its construction. It probably would not be safe to calculate upon drawing from the Erie canal a sufficient quantity of water to feed this canal at all times, if no disposition had been made of that water other than for purposes of navigation. But all of the surplus water upon this part of the canal, has been sold by the Canal Commissioners, in pursuance of an act of the Legislature passed April 20, 1825, to Eber Durham and Ichabod S. Spencer. A lease has been given by the Canal Commissioners to the purchasers, which bears date August 25, 1827. By which lease the said Canal Commissioners convey to said Durham and Spencer all the surplus water, which, with-

out injury to the navigation or security of the canal, may be spared from the Erie canal, to be taken and drawn from that part thereof between Brandy brook and the Canaseraga creek, at such place and in such manner, and to be discharged at such place and in such manner as the Canal Commissioners shall from time to time deem most advisable for the security of the canal, and for the convenience of the navigation thereof. By said lease said Durham and Spencer covenant to pay the Commissioners of the Canal Fund, yearly, and every year thereafter, on the first day of September in each year, the sum of two hundred and ninety-five dollars. The Canal Commissioners by said lease reserve to themselves and to the Legislature the right to limit, control, or wholly resume the said waters and all the rights granted by the lease, whenever, in the opinion of the said Commissioners, or of the Legislature, the safety of the canal or its appendages, or the necessary supply of water for the navigation of the canal, shall render such limitation, control or resumption necessary.

All of which is respectfully submitted,

*Dated February 29, 1832.*

JONAS EARLL, JR.  
S. YOUNG,  
A. C. FLAGG,  
SILAS WRIGHT, JR.  
W. C. BOUCK,  
A. KEYSER.  
SIMEON DE WITT.

**No. 65.**

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**IN SENATE,**

**March 1, 1832.**

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**REPORT**

**Of the Secretary of State, giving the Census of the  
several Congressional Districts in 1820, 1825 and  
1830, in compliance with a resolution of the Senate  
of the 23d of February, 1832.**

**STATE OF NEW-YORK, }  
SECRETARY'S OFFICE. }**

*Albany, February 29, 1832.*

**TO EDWARD P. LIVINGSTON,  
President of the Senate.**

**SIR,**

Herewith is presented a report, in compliance with a resolution  
of the Senate, dated February 23d, 1832.

With much respect,

Your obedient servant,

**A. C. FLAGG.**



# REPORT.

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STATE OF NEW-YORK, }  
SECRETARY'S OFFICE. }

*Albany, February 27, 1832.*

The Secretary of State, in obedience to a resolution of the Senate of the 23d of February, respectfully submits the annexed tables, marked A. and B.

The table marked A. shows the population of each county and congressional district in 1820, 1825 and 1830.

The table marked B. exhibits the population as ascertained by the State census of 1825, and the United States census of 1830; and also the rate per cent of the annual increase in each county and district, and the rate per cent of the increase for five years.

There may be some inaccuracies in the census of 1820, as given in Table A. in those counties which have since been divided, or altered by detaching or adding towns. So far as it was practicable to trace the alterations of counties, and the effect of those alterations in increasing or diminishing the population, it has been done, in order to show the number of inhabitants in 1820, occupying the territory which now forms the county. The paper marked C. shows the census of each county, as the same was taken in 1820, under the authority of the United States. It is believed that none of the counties have been materially altered since the census of 1825 was taken.

A map has also been prepared, which exhibits the lines of the counties, the population in 1830, and the number of the congressional district to which each county belongs, marked in red ink. Although this map was not expressly called for by the resolution, it is presented with the other documents, under a belief that it will be found useful in attaining the objects for which the information in the resolution is required.

A. C. FLAGG.



## DOCUMENTS.

(A.)

*A Statement of the several Counties in the State, arranged in the order of the several Congressional Districts, and shewing the population of the territory composing each County as at present organized, in 1820, 1825 and 1830.*

| DISTRICTS AND COUNTIES.             | Population in<br>1820. | Population in<br>1825. | Population in<br>1830. |
|-------------------------------------|------------------------|------------------------|------------------------|
| <b>First District,</b>              |                        |                        |                        |
| Suffolk, .....                      | 24,272                 | 23,695                 | 26,780                 |
| Queens, .....                       | 21,519                 | 20,331                 | 22,278                 |
|                                     | 45,791                 | 44,026                 | 49,058                 |
| <b>Second District,</b>             |                        |                        |                        |
| Kings, .....                        | 11,187                 | 14,679                 | 20,537                 |
| Rockland, .....                     | 8,837                  | 8,016                  | 9,388                  |
| Richmond, .....                     | 6,135                  | 5,932                  | 7,084                  |
|                                     | 26,159                 | 28,627                 | 37,009                 |
| <b>Third District, (3 members,)</b> |                        |                        |                        |
| New-York, .....                     | 123,706                | 166,086                | 203,007                |
| <b>Fourth District,</b>             |                        |                        |                        |
| Putnam, .....                       | 11,268                 | 11,866                 | 12,701                 |
| Westchester, .....                  | 32,638                 | 33,131                 | 36,456                 |
|                                     | 43,906                 | 44,997                 | 49,157                 |
| <b>Fifth District,</b>              |                        |                        |                        |
| Dutchess, .....                     | 46,615                 | 46,698                 | 50,926                 |
| <b>Sixth District,</b>              |                        |                        |                        |
| Orange, .....                       | 41,213                 | 41,723                 | 45,372                 |
| <b>Seventh District,</b>            |                        |                        |                        |
| Ulster, .....                       | 30,934                 | 32,015                 | 36,559                 |
| Sullivan, .....                     | 8,900                  | 10,373                 | 12,372                 |
|                                     | 39,834                 | 42,388                 | 48,931                 |
| <b>Eighth District,</b>             |                        |                        |                        |
| Columbia, .....                     | 38,330                 | 37,970                 | 39,952                 |



| DISTRICTS AND COUNTIES.                              | Population in<br>1820. | Population in<br>1825. | Population in<br>1830. |
|--|------------------------|------------------------|------------------------|
| Ninth District,<br>Rensselaer, .....                 | 40,153                 | 44,065                 | 49,472                 |
| Tenth District,<br>Albany, .....                     | 38,116                 | 42,821                 | 53,560                 |
| Eleventh District,<br>Greene, .....                  | 23,026                 | 26,229                 | 29,525                 |
| Delaware, .....                                      | 26,254                 | 29,565                 | 32,933                 |
|  | 49,280                 | 55,794                 | 62,458                 |
| Twelfth District,<br>Schoharie, .....                | 23,154                 | 25,926                 | 27,910                 |
| Schenectady, .....                                   | 13,081                 | 12,876                 | 12,334                 |
|  | 36,235                 | 38,802                 | 40,244                 |
| Thirteenth District,<br>Otsego, .....                | 45,137                 | 47,898                 | 51,372                 |
| Fourteenth District,<br>Oneida, .....                | 50,997                 | 57,847                 | 71,326                 |
| Fifteenth District,<br>Herkimer, .....               | 31,017                 | 33,040                 | 35,869                 |
| Sixteenth District,<br>Montgomery & Hamilton,        | 38,820                 | 40,902                 | 44,918                 |
| Seventeenth District,<br>Saratoga, .....             | 36,052                 | 36,295                 | 38,616                 |
| Eighteenth District,<br>Washington, .....            | 38,831                 | 39,280                 | 42,615                 |
| Nineteenth District,<br>Clinton, .....               | 12,070                 | 14,486                 | 19,344                 |
| Essex, .....   | 12,811                 | 15,993                 | 19,387                 |
| Franklin, .....                                      | 4,439                  | 7,978                  | 11,312                 |
| Warren, .....  | 9,453                  | 10,906                 | 11,795                 |
|  | 38,773                 | 49,363                 | 61,838                 |
| Twentieth District, (2 members),<br>Jefferson, ..... | 32,952                 | 41,650                 | 48,515                 |
| Lewis, .....   | 9,227                  | 11,669                 | 14,958                 |
| Oswego, .....  | 12,374                 | 17,875                 | 27,104                 |
| St. Lawrence, .....                                  | 16,037                 | 27,595                 | 36,351                 |
|  | 70,590                 | 98,789                 | 126,923                |

| DISTRICTS AND COUNTIES.                | Population in<br>1820. | Population in<br>1825. | Population in<br>1830. |
|--|------------------------|------------------------|------------------------|
| <b>Twenty-first District,</b>          |                        |                        |                        |
| Chenango, .....                        | 31,215                 | 34,215                 | 37,404                 |
| Broome, .....                          | 11,400                 | 13,893                 | 17,582                 |
|  | 42,615                 | 48,108                 | 54,986                 |
| <b>Twenty-second District,</b>         |                        |                        |                        |
| Cortland, .....                        | 16,507                 | 20,271                 | 23,693                 |
| Madison, ....                          | 32,208                 | 35,646                 | 39,037                 |
|  | 48,715                 | 55,917                 | 62,730                 |
| <b>Twenty-third District,</b>          |                        |                        |                        |
| Onondaga, ....                         | 41,467                 | 48,435                 | 58,974                 |
| <b>Twenty-fourth District,</b>         |                        |                        |                        |
| Cayuga, .....                          | 38,897                 | 42,743                 | 47,947                 |
| <b>Twenty-fifth District,</b>          |                        |                        |                        |
| Tompkins, .....                        | 26,179                 | 32,908                 | 36,545                 |
| Tioga, .....                           | 14,716                 | 19,951                 | 27,704                 |
|  | 40,895                 | 52,859                 | 64,249                 |
| <b>Twenty-sixth Dist. (2 members,)</b> |                        |                        |                        |
| Ontario, .....                         | 35,315                 | 37,422                 | 40,167                 |
| Seneca, .....                          | 17,773                 | 20,169                 | 21,031                 |
| Wayne, .....                           | 20,309                 | 26,761                 | 33,555                 |
| Yates, .....                           | 14,101                 | 17,455                 | 19,019                 |
|  | 87,498                 | 101,807                | 113,772                |
| <b>Twenty-seventh District,</b>        |                        |                        |                        |
| Monroe, .....                          | 26,529                 | 39,108                 | 49,862                 |
| Livingston, .....                      | 19,254                 | 23,860                 | 27,719                 |
|  | 45,783                 | 62,968                 | 77,581                 |
| <b>Twenty-eighth District,</b>         |                        |                        |                        |
| Allegany, .....                        | 9,330                  | 18,164                 | 26,218                 |
| Cattaraugus, .....                     | 4,090                  | 8,643                  | 16,726                 |
| Steuben, .....                         | 18,586                 | 25,004                 | 33,975                 |
|  | 32,006                 | 51,811                 | 76,919                 |
| <b>Twenty-ninth District,</b>          |                        |                        |                        |
| Genesee, .....                         | 30,146                 | 40,905                 | 51,992                 |
| Orleans, .....                         | 9,689                  | 14,460                 | 18,773                 |
|  | 39,835                 | 55,365                 | 70,765                 |
| <b>Thirtieth District,</b>             |                        |                        |                        |
| Chautauque, .....                      | 12,568                 | 20,640                 | 34,657                 |
| Erie, .....                            | 15,668                 | 24,316                 | 35,710                 |
| Niagara, .....                         | 7,322                  | 14,069                 | 18,485                 |
|  | 35,558                 | 59,025                 | 88,852                 |

## RECAPITULATION.

| DISTRICTS.     |                 | Population in<br>1820. | Population in<br>1825. | Population in<br>1830. |
|----------------|-----------------|------------------------|------------------------|------------------------|
| First          | District, ..... | 45,791                 | 44,026                 | 49,058                 |
| Second         | do .....        | 26,159                 | 28,627                 | 37,009                 |
| Third          | " .....         | 123,706                | 166,086                | 203,007                |
| Fourth         | " .....         | 43,906                 | 44,997                 | 49,157                 |
| Fifth          | " .....         | 46,615                 | 46,698                 | 50,926                 |
| Sixth          | " .....         | 41,213                 | 41,723                 | 45,372                 |
| Seventh        | " .....         | 39,834                 | 42,388                 | 48,931                 |
| Eighth         | " .....         | 38,330                 | 37,970                 | 39,952                 |
| Ninth          | " .....         | 40,153                 | 44,065                 | 49,472                 |
| Tenth          | " .....         | 38,116                 | 42,821                 | 53,560                 |
| Eleventh       | " .....         | 49,280                 | 55,794                 | 62,458                 |
| Twelfth        | " .....         | 36,235                 | 38,802                 | 40,244                 |
| Thirteenth     | " .....         | 45,137                 | 47,898                 | 51,372                 |
| Fourteenth     | " .....         | 50,997                 | 57,847                 | 71,326                 |
| Fifteenth      | " .....         | 31,017                 | 33,040                 | 35,869                 |
| Sixteenth      | " .....         | 38,820                 | 40,902                 | 44,918                 |
| Seventeenth    | " .....         | 36,052                 | 36,295                 | 36,616                 |
| Eighteenth     | " .....         | 38,831                 | 39,280                 | 42,615                 |
| Nineteenth     | " .....         | 38,773                 | 49,363                 | 61,838                 |
| Twentieth      | " .....         | 70,590                 | 98,789                 | 126,928                |
| Twenty-first   | " .....         | 42,615                 | 48,108                 | 54,986                 |
| Twenty-second  | " .....         | 48,715                 | 55,917                 | 62,730                 |
| Twenty-third   | " .....         | 41,467                 | 46,435                 | 58,974                 |
| Twenty-fourth  | " .....         | 38,897                 | 42,743                 | 47,947                 |
| Twenty-fifth   | " .....         | 40,895                 | 52,859                 | 64,249                 |
| Twenty-sixth   | " .....         | 87,498                 | 101,807                | 113,772                |
| Twenty-seventh | " .....         | 45,783                 | 62,968                 | 77,581                 |
| Twenty-eighth  | " .....         | 32,006                 | 51,811                 | 76,919                 |
| Twenty-ninth   | " .....         | 39,833                 | 55,365                 | 70,765                 |
| Thirtieth      | " .....         | 35,558                 | 59,025                 | 88,852                 |
|                |                 | 1,372,824              | 1,616,449              | 1,919,403              |

**B.**

*A Statement, showing the population of each Congressional District in 1825 and 1830, and also the rate per cent of the annual gain of each County and of each Congressional District, from 1826 to 1830, inclusive, and the rate per cent of the gain in each Congressional District for five years preceding 1830.*

| DISTRICTS AND COUNTIES.             | Population in<br>1825. | Population in<br>1830. | Rate pr ct. of<br>annual gain. | Total gain pr<br>ct. in 5 years. |
|-------------------------------------|------------------------|------------------------|--------------------------------|----------------------------------|
| <b>First District,</b>              |                        |                        |                                |                                  |
| Suffolk, .....                      | 23,695                 | 26,780                 | 2.60                           |                                  |
| Queens, .....                       | 20,331                 | 22,278                 | 1.91                           |                                  |
|                                     | 44,026                 | 49,058                 | 2.26                           | 11.30                            |
| <b>Second District,</b>             |                        |                        |                                |                                  |
| Kings, .....                        | 14,679                 | 20,537                 | 7.98                           |                                  |
| Rockland, .....                     | 8,016                  | 9,388                  | 3.42                           |                                  |
| Richmond, .....                     | 5,932                  | 7,084                  | 3.88                           |                                  |
|                                     | 28,627                 | 37,009                 | 5.85                           | 29.28                            |
| <b>Third District, (3 members.)</b> |                        |                        |                                |                                  |
| New-York, .....                     | 166,086                | 203,007                | 4.45                           | 22.23                            |
| <b>Fourth District,</b>             |                        |                        |                                |                                  |
| Putnam, .....                       | 11,866                 | 12,701                 | 1.41                           |                                  |
| Westchester, .....                  | 33,131                 | 36,456                 | 2.01                           |                                  |
|                                     | 44,997                 | 49,157                 | 1.85                           | 9.25                             |
| <b>Fifth District,</b>              |                        |                        |                                |                                  |
| Dutchess, .....                     | 46,698                 | 50,926                 | 1.81                           | 9.05                             |
| <b>Sixth District,</b>              |                        |                        |                                |                                  |
| Orange, .....                       | 41,723                 | 45,372                 | 1.74                           | 8.74                             |
| <b>Seventh District,</b>            |                        |                        |                                |                                  |
| Ulster, .....                       | 32,015                 | 36,559                 | 2.84                           |                                  |
| Sullivan, .....                     | 10,373                 | 12,372                 | 3.95                           |                                  |
|                                     | 42,388                 | 48,931                 | 3.08                           | 15.41                            |
| <b>Eighth District,</b>             |                        |                        |                                |                                  |
| Columbia, .....                     | 37,970                 | 39,952                 | 1.04                           | 5.21                             |
| <b>Ninth District,</b>              |                        |                        |                                |                                  |
| Rensselaer, .....                   | 44,065                 | 49,472                 | 2.45                           | 12.27                            |
| <b>Tenth District,</b>              |                        |                        |                                |                                  |
| Albany, .....                       | 42,821                 | 53,560                 | 5.02                           | 25.10                            |

| DISTRICTS AND COUNTIES.             | Population in<br>1825. | Population in<br>1830. | Rate pr ct. of<br>annual gain. | Total gain pr<br>ct. in 5 years. |
|-------------------------------------|------------------------|------------------------|--------------------------------|----------------------------------|
| <b>Eleventh District,</b>           |                        |                        |                                |                                  |
| Greene,.....                        | 26,229                 | 29,525                 | 2.51                           |                                  |
| Delaware, .....                     | 29,565                 | 32,933                 | 2.28                           |                                  |
|                                     | 55,794                 | 62,458                 | 2.39                           | 11.94                            |
| <b>Twelfth District,</b>            |                        |                        |                                |                                  |
| Schoharie, .....                    | 25,926                 | 27,910                 | 1.53                           |                                  |
| Schenectady, .....                  | 12,876                 | 12,334                 | 0.84 loss                      |                                  |
|                                     | 38,802                 | 40,244                 | 0.74                           | 3.72                             |
| <b>Thirteenth District,</b>         |                        |                        |                                |                                  |
| Otsego, .....                       | 47,898                 | 51,372                 | 1.45                           | 7.25                             |
| <b>Fourteenth District,</b>         |                        |                        |                                |                                  |
| Oneida, .....                       | 57,847                 | 71,326                 | 4.66                           | 23.30                            |
| <b>Fifteenth District,</b>          |                        |                        |                                |                                  |
| Herkimer, .....                     | 33,040                 | 35,869                 | 1.71                           | 8.56                             |
| <b>Sixteenth District,</b>          |                        |                        |                                |                                  |
| Montgomery & Hamilton,              | 40,902                 | 44,918                 | 1.96                           | 9.82                             |
| <b>Seventeenth District,</b>        |                        |                        |                                |                                  |
| Saratoga, .....                     | 36,295                 | 38,616                 | 1.28                           | 6.39                             |
| <b>Eighteenth District,</b>         |                        |                        |                                |                                  |
| Washington, .....                   | 39,280                 | 42,615                 | 1.69                           | 8.49                             |
| <b>Nineteenth District,</b>         |                        |                        |                                |                                  |
| Clinton, .....                      | 14,486                 | 19,344                 | 6.71                           |                                  |
| Essex, .....                        | 15,993                 | 19,387                 | 4.25                           |                                  |
| Franklin, .....                     | 7,978                  | 11,312                 | 8.36                           |                                  |
| Warren, .....                       | 10,906                 | 11,795                 | 1.63                           |                                  |
|                                     | 49,363                 | 61,838                 | 5.05                           | 25.27                            |
| <b>Twentieth Dist. (2 members,)</b> |                        |                        |                                |                                  |
| Jefferson, .....                    | 41,650                 | 48,515                 | 3.30                           |                                  |
| Lewis, .....                        | 11,669                 | 14,958                 | 5.64                           |                                  |
| Oswego, .....                       | 17,875                 | 27,104                 | 10.33                          |                                  |
| St. Lawrence, .....                 | 27,595                 | 36,351                 | 6.34                           |                                  |
|                                     | 98,789                 | 126,928                | 4.89                           | 24.43                            |
| <b>Twenty-first District,</b>       |                        |                        |                                |                                  |
| Chenango, .....                     | 34,215                 | 37,404                 | 1.86                           |                                  |
| Broome, .....                       | 13,893                 | 17,582                 | 5.36                           |                                  |
|                                     | 48,108                 | 54,986                 | 2.86                           | 14.29                            |

| DISTRICTS AND COUNTIES.                                  | Population in<br>1825. | Population in<br>1830. | Rate pr ct. of<br>annual gain. | Total gain pr<br>ct. in 5 years. |
|--|------------------------|------------------------|--------------------------------|----------------------------------|
| <b>Twenty-second District,</b>                           |                        |                        |                                |                                  |
| Cortland,.....   | 20,271                 | 23,693                 | 3.38                           |                                  |
| Madison,.....  | 35,646                 | 39,037                 | 1.90                           |                                  |
|  | 55,917                 | 62,730                 | 2.44                           | 12.18                            |
| <b>Twenty-third District,</b>                            |                        |                        |                                |                                  |
| Onondaga,.....   | 48,435                 | 58,974                 | 4.35                           | 21.76                            |
| <b>Twenty-fourth District,</b>                           |                        |                        |                                |                                  |
| Cayuga, .....  | 42,743                 | 47,947                 | 2.43                           | 12.17                            |
| <b>Twenty-fifth District,</b>                            |                        |                        |                                |                                  |
| Tompkins, .....  | 32,908                 | 36,545                 | 2.21                           |                                  |
| Tioga, .....   | 19,951                 | 27,704                 | 7.77                           |                                  |
|  | 52,859                 | 64,249                 | 4.31                           | 21.55                            |
| <b>Twenty-sixth Dist. (2 memb.)</b>                      |                        |                        |                                |                                  |
| Ontario,.....  | 37,422                 | 40,167                 | 1.46                           |                                  |
| Seneca, .....  | 20,169                 | 21,031                 | 0.85                           |                                  |
| Wayne, .....   | 26,761                 | 33,555                 | 5.08                           |                                  |
| Yates, .....   | 17,455                 | 19,019                 | 1.79                           |                                  |
|  | 101,807                | 113,772                | 2.84                           | 11.71                            |
| <b>Twenty-seventh District,</b>                          |                        |                        |                                |                                  |
| Monroe, .....  | 39,108                 | 49,862                 | 5.50                           |                                  |
| Livingston, .....  | 23,860                 | 27,719                 | 3.23                           |                                  |
|  | 62,968                 | 77,581                 | 4.64                           | 23.21                            |
| <b>Twenty-eighth District,</b>                           |                        |                        |                                |                                  |
| Allegany, .....  | 18,164                 | 26,218                 | 8.87                           |                                  |
| Cattaraugus, .....                                       | 8,643                  | 16,726                 | 18.70                          |                                  |
| Steuben, .....   | 25,004                 | 33,975                 | 7.18                           |                                  |
|  | 51,811                 | 76,919                 | 9.69                           | 48.46                            |
| <b>Twenty-ninth District,</b>                            |                        |                        |                                |                                  |
| Genesee,.....  | 40,905                 | 51,992                 | 5.42                           |                                  |
| Orleans, .....   | 14,460                 | 18,773                 | 5.97                           |                                  |
|  | 55,365                 | 70,765                 | 5.56                           | 27.82                            |
| <b>Thirtieth District,</b>                               |                        |                        |                                |                                  |
| Chautauque, .....  | 20,640                 | 34,657                 | 13.58                          |                                  |
| Erie, .....  | 24,316                 | 35,710                 | 9.37                           |                                  |
| Niagara, .....   | 14,069                 | 18,485                 | 6.28                           |                                  |
|  | 59,025                 | 88,852                 | 10.11                          | 50.53                            |
| <b>Rate per cent of the increase in the whole State,</b> |                        |                        | 3.75                           | 18.74                            |

( C. )

## Census of 1820.

| COUNTIES.          | Population. | COUNTIES.         | Population. |
|--------------------|-------------|-------------------|-------------|
| Albany, .....      | 38,116      | Saratoga, .....   | 36,052      |
| Allegany, .....    | 9,330       | Schenectady, .... | 13,081      |
| Broome, .....      | 14,343      | Schoharie, .....  | 23,154      |
| Cayuga, .....      | 38,897      | Seneca, .....     | 23,619      |
| Chenango, .....    | 31,215      | St. Lawrence, ... | 16,037      |
| Clinton, .....     | 12,070      | Steuben, .....    | 21,969      |
| Cortland, .....    | 16,507      | Tioga, .....      | 16,971      |
| Cattaraugus, ..... | 4,090       | Tompkins, .....   | 20,681      |
| Chautauque, .....  | 12,568      | Washington, ....  | 38,831      |
| Delaware, .....    | 26,587      | Warren, .....     | 9,453       |
| Essex, .....       | 12,811      | New-York, .....   | 123,706     |
| Franklin, .....    | 4,439       | Kings, .....      | 11,187      |
| Genesee, .....     | 58,093      | Queens, .....     | 21,519      |
| Hamilton, .....    | 1,251       | Suffolk, .....    | 24,272      |
| Herkimer, .....    | 31,017      | Richmond, .....   | 6,135       |
| Jefferson, .....   | 32,952      | Westchester, .... | 32,638      |
| Lewis, .....       | 9,227       | Rockland, .....   | 8,837       |
| Madison, .....     | 32,208      | Dutchess, .....   | 46,615      |
| Montgomery, .....  | 37,569      | Orange, .....     | 41,213      |
| Niagara, .....     | 22,990      | Putnam, .....     | 11,268      |
| Oneida, .....      | 50,997      | Ulster, .....     | 30,934      |
| Oswego, .....      | 12,374      | Sullivan, .....   | 8,900       |
| Onondaga, .....    | 41,467      | Columbia, .....   | 38,330      |
| Ontario, .....     | 88,267      | Greene, .....     | 22,996      |
| Otsego, .....      | 44,856      |                   |             |
| Rensselaer, .....  | 40,153      |                   |             |
|                    |             |                   | 1,372,812   |

Six counties have been organized since the census of 1820 was taken, viz: Erie, Livingston, Monroe, Wayne, Orleans and Yates. Erie was formed from Niagara in 1821; Livingston, from Ontario, in 1821; Monroe, from Genesee and Ontario, in 1821; Wayne, from Ontario and Seneca, in 1823; Yates, from Ontario, in 1823; Orleans, from Genesee, in 1824.



